

Agenda Item No. 8a

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1095

TO: Mayor and City Council Members

SUBJECT: Petitions for Street Paving, Sanitary Sewer and Water Distribution System to serve Southern Ridge Addition (west of Maize, south of Pawnee) (District IV)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Petitions.

Background: On February 4, 2003, and March 2, 2004, the City Council approved Petitions for street paving, sanitary sewer and water distribution system in Southern Ridge Addition. Since that time, the developer has divided a number of lots to reflect current home marketing conditions. The developer has submitted new Petitions to reallocate special assessments to accommodate the change in building site boundaries. The signature on the petitions represent 100% of the improvement districts.

Analysis: The projects will serve a new residential development located west of Maize, south of Pawnee.

Financial Considerations: The project budgets are unchanged.

Legal Considerations: State Statutes provide that a Petition is valid if signed by a majority of resident property owners or owners of the majority of the property in the improvement district.

Recommendation/Action: It is recommended that the City Council approve the Petitions and adopt the Resolutions.

Agenda Item No. 8b

City of Wichita  
City Council Meeting

November 9, 2004

Agenda Report No. 04-1096

TO: Mayor and City Council Members

SUBJECT: Petition to install traffic signals on Greenwich, approximately 850 feet north of 21st (District II)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Petition.

Background: On August 31, 2004, the City Council approved a Petition to install traffic signals on Greenwich, approximately 850 feet north of 21st. A new Petition has been submitted to include additional tracts that benefit from the project. In addition, the project budget has been increased to reflect recent bid prices. The signatures on the new Petition represent 100% of the improvement district.

Analysis: The project will serve new commercial developments located along Greenwich, north of 21st.

Financial Considerations: The existing Petition totals \$110,000. The new Petition totals \$140,000. The funding source is special assessments.

Legal Considerations: State Statutes provide that a Petition is valid if signed by a majority of resident property owners or the majority of the property in the improvement district.

Recommendation/Action: It is recommended that the City Council approve the Petition and adopt the Resolution (hold for development).

Agenda Item No. 10

CITY OF WICHITA  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1097

TO: Mayor and City Council Members

SUBJECT: Approval of Encroachment Agreement for 330-334 North Mead  
(District VI)

INITIATED BY: Office of Property Management

AGENDA: Consent

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Recommendation: Approve the agreement.

Background: A building has been constructed at 330-334 North Mead to provide a new site for City Arts and provide additional office and retail space in the Old Town Cinema area. As part of finalization of construction, a survey was commissioned that indicated several minor encroachments by the building on to City right-of-way. In order to complete the proposed development, the encroachments need to be resolved.

Analysis: The City's Legal Department has a standard form for resolving encroachments. These types of encroachments are relatively common in the downtown area. Resolution of the encroachment will allow the development and utilization of this property.

Financial Considerations: There is no financial cost to the City. Development of the property will increase the property tax valuation in the area.

Legal Considerations: The Law Department has approved the agreement as to form.

Recommendation/Action: It is recommended that the City Council approve the agreement and authorize necessary signatures.

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1098

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Gray's 5th Addition (north of 47th  
Street South, east of Hoover) (District IV)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the water distribution system, sanitary sewer and paving improvements in Gray 5th Addition on August 6, 2002.

Analysis: The proposed Agreement between the City and Baughman Company, P.A. provides for the design of bond financed improvements consisting of water distribution system, sanitary sewer and paving in Gray's 5th Addition. Per Administrative Regulation 7a, staff recommends that Baughman be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to Baughman will be on a lump sum basis of \$43,500, and will be paid by special assessments.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

BAUGHMAN COMPANY, P.A.

for

## GRAY'S 5TH ADDITION

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BAUGHMAN COMPANY, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM NO. 448 89681 serving Lots 36 through 42, Block A; Lots 7 through 16, Block B; Lots 1 through 4, Block C; Lots 13 through 30, Block C; Lots 1 through 24, Block D, Gray's 5th Addition (north of 47th Street South, east of Hoover) (Project No. 448 89681).

LATERAL 2, MAIN 21, SOUTHWEST INTERCEPTOR SEWER serving Lots 12 through 16, Block B; Lots 1 through 3, Block C; Lots 23 through 30, Block C; Lots 1 through 16, Block D; Lots 21 through 24, Block D, Gray's 5th Addition (north of 47th Street South, east of Hoover) (Project No. 468 83431).

44th STREET SOUTH from the east line of Lot 12, Block C, east to the west line of Doris, on FLORA from the south line of 44th Street South, south to the south line of the plat, and on DORIS from the north line of the plat, south to the south line of the plat. That there be constructed pavement on FLORA COURT from the west line of Flora, west to and including the cul-de-sac, on DORIS COURT (Lots 15 through 30, Block C) from the west line of Doris, west to and including the cul-de-sac, on DORIS COURT (Lots 1 through 8, Block D), from the east line of Doris, east to and including the cul-de-sac, on DORIS COURT (Lots 9 through 16, Block D), from the east line of Doris, east to and including the cul-de-sac, and on DORIS COURT (Lots 17 through 24, Block D) from the east line of Doris, east to and including the cul-de-sac. That sidewalk be constructed along one side of 44th Street South, Flora and Dora, (north of 47th Street South, east of Hoover) (Project No. 472 83553).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

### I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Gray's 5th Addition and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and

maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory  
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

### III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

#### IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 448 89681	\$ 8,400.00
Project No. 468 83431	\$11,800.00
Project No. 472 83553	\$23,300.00
TOTAL	\$43,500.00

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

#### V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work, or because the services of the ENGINEER are unsatisfactory; PROVIDED, however, that in any case the ENGINEER shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this agreement, but in no case shall payment be more than the ENGINEER'S actual costs plus a fee for profit based upon a fixed percentage of the ENGINEER'S actual costs.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by



the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY

COUNCIL

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Carlos Mayans, Mayor

SEAL:

ATTEST:

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Karen Sublett, City Clerk

APPROVED AS TO FORM:

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Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.

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(Name & Title)

ATTEST:

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“EXHIBIT “A

## SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared in ink on standard 22” x 36” mylar sheets.

In connection with the services to be provided, the ENGINEER shall:

### A. PHASE I - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Soils and Foundation Investigations. The CITY’S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER’S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
3. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
4. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT’s plans and proposed special provisions shall address the requirements included in the City’s Administrative Regulations 78, “Cleanup, Restoration or Replacement Following Construction.” Also, final plans, field notes and other pertinent project mapping records are to be provided to the CITY via floppy diskettes (3 ½”), CD-ROM, or other media acceptable to the City Engineer. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design

work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.

5. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the monumentation of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.

6. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

7. Deliver the original tracings of the Final approved plans to the CITY for their use in printing plans for prospective bidders.

8. All applicable coordinate control points and related project staking information shall be furnished on a 3-1/2" diskette in a format agreed upon by the CITY. When applicable, this coordinate information will be used by the CITY for construction staking purposes.

6. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.

a. Plan Development for the water improvements by October 18, 2004.  
(Project No. 448 89681).

b. Plan Development for the sewer improvements by October 18, 2004.  
(Project No. 468 83431).

c. Plan Development for the paving improvements by November 15, 2004.  
(Project No. 472 83553).

Agenda Item No. 11b

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1099

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for My House Addition (south of 55th Street South, west of Broadway) (District IV)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the water distribution system, sanitary sewer, storm water drainage and paving improvements in My House Addition on June 8, 2004.

Analysis: The proposed Agreement between the City and Baughman Company, P.A. provides for the design of bond financed improvements consisting of water distribution system, sanitary sewer, storm water drainage and paving in My House Addition. Per Administrative Regulation 7a, staff recommends that Baughman be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to Baughman will be on a lump sum basis of \$41,400, and will be paid by special assessments.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

BAUGHMAN COMPANY, P.A.

for

MY HOUSE ADDITION

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BAUGHMAN COMPANY, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM NO. 448 89977 serving Lots 3 through 12, Block A; Lots 17 through 22, Block A; Lots 3 through 8, Block B, My House Addition (south of 55th Street South, west of Broadway) (Project No. 448 89977).

LATERAL 499, SOUTHWEST INTERCEPTOR SEWER serving Lots 1 through 22, Block A; Lots 1 through 8, Block B, My House Addition (south of 55th Street South, west of Broadway) (Project No. 468 83835).

STORM WATER DRAIN NO. 235 serving Lots 1 through 22, Block A; Lots 1 through 8, Block B, My House Addition (south of 55th Street South, west of Broadway) (Project No. 468 83836).

WEST 56TH CIRCLE SOUTH from the west line of Minnie Avenue, west to and including the cul-de-sac, and on WAYNE CIRCLE from the west line of Minnie Avenue, west to and including the cul-de-sac (south of 55th Street South, west of Broadway) (Project No. 472 84049).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

#### I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in My House Addition and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$5,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their

employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory  
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

### III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

### IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 448 89977	\$ 4,900.00
Project No. 468 83835	\$13,100.00
Project No. 468 83836	\$13,600.00
Project No. 472 84049	\$ 9,800.00
TOTAL	\$41,400.00

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work, or because the services of the ENGINEER are unsatisfactory; PROVIDED, however, that in any case the ENGINEER shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this agreement, but in no case shall payment be more than the ENGINEER'S actual costs plus a fee for profit based upon a fixed percentage of the ENGINEER'S actual costs.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by



the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

CITY OF WICHITA

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Carlos Mayans, Mayor

SEAL:

ATTEST:

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Karen Sublett, City Clerk

APPROVED AS TO FORM:

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Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.

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(Name & Title)

ATTEST:

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“EXHIBIT “A

## SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared in ink on standard 22” x 36” mylar sheets.

In connection with the services to be provided, the ENGINEER shall:

### A. PHASE I - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Soils and Foundation Investigations. The CITY’S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER’S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
3. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
4. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT’s plans and proposed special provisions shall address the requirements included in the City’s Administrative Regulations 78, “Cleanup, Restoration or Replacement Following Construction.” Also, final plans, field notes and

other pertinent project mapping records are to be provided to the CITY via floppy diskettes (3 1/2"), CD-ROM, or other media acceptable to the City Engineer. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.

5. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the monumentation of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.

6. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

7. Deliver the original tracings of the Final approved plans to the CITY for their use in printing plans for prospective bidders.

8. All applicable coordinate control points and related project staking information shall be furnished on a 3-1/2" diskette in a format agreed upon by the CITY. When applicable, this coordinate information will be used by the CITY for construction staking purposes.

6. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.

a. Plan Development for the water improvements by November 8, 2004.  
(Project No. 448 89977).

b. Plan Development for the sewer improvements by November 8, 2004.  
(Project No. 468 83835).

c. Plan Development for the drainage improvements by November 29, 2004.  
(Project No. 468 83836).

d. Plan Development for the paving improvements by November 29, 2004.  
(Project No. 472 84049).

Agenda Item No. 11c

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1100

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Lateral 109, Sanitary Sewer No. 23  
(west of Arkansas, north of 41st Street North) (District VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the sanitary sewer on September 14, 2004.

Analysis: The proposed Agreement between the City and Ruggles & Bohm, P.A. (R&B) provides for the design of Lateral 109, Sanitary Sewer No. 23. The Staff Screening & Selection Committee selected R&B for the design on October 18, 2004.

Financial Considerations: Payment to R&B will be on a lump sum basis of \$18,000, and will be paid by special assessments.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

RUGGLES & BOHM, P.A.

for

LATERAL 109, SANITARY SEWER NO. 23

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and RUGGLES & BOHM, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

LATERAL 109, SANITARY SEWER NO. 23  
(west of Arkansas, north of 41st Street North)  
(Project No. 468 83876)

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing Lateral 109, Sanitary Sewer No. 23 and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory  
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

### III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

### IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum payment plus partials made on the basis of the lump sum fee amount of \$18,000.00.

During the progress of work covered by this agreement, partial payments may be made to the ENGINEER at intervals of one calendar month. The progress billings shall be supported by documentation acceptable to the City Engineer which shall include a project bar chart or other suitable progress chart indicating progress on the PROJECT and a record of the time period to complete the work, the time period elapsed, and the time period that remains to complete the work. Billings submitted during the progress of the work will be paid on the basis of satisfactory completion of major project tasks. The major tasks and accumulated partial payment amounts are listed below:

Accumulated partial payments shall not exceed \$9,000.00 (fifty percent of the maximum fee payment amount) until field check plans have been received and approved by the City Engineer for distribution to utility companies. Accumulated partial payments shall not exceed \$12,600.00 (seventy percent of the maximum fee payment amount) until office check plans have been received and approved by the City Engineer for distribution to utility companies. Accumulated partial payments shall not exceed \$14,400.00 (eighty

percent of the maximum fee payment amount) until final utility plans allowing for utility relocations or adjustments for the PROJECT have been received and approved by the City Engineer for distribution to the utilities.

Accumulated partial payments for the PROJECT shall be based on milestones in Exhibit A and shall not exceed eighty-five percent (85%) of the total fees for services prior to satisfactory completion of all work required by this agreement

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work, or because the services of the ENGINEER are unsatisfactory; PROVIDED, however, that in any case the ENGINEER shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this agreement, but in no case shall payment be more than the ENGINEER'S actual costs plus a fee for profit based upon a fixed percentage of the ENGINEER'S actual costs.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.



F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

CITY OF WICHITA

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Carols Mayans, Mayor

SEAL:

ATTEST:

---

Karen Sublett, City Clerk

APPROVED AS TO FORM:

---

Gary Rebenstorf, Director of Law

RUGGLES & BOHM, P.A.

---

(Name & Title)

ATTEST:

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EXHIBIT "A"  
SCOPE OF SERVICES

LATERAL 109, SANITARY SEWER NO. 23  
(west of Arkansas, north of 41st Street North)  
(468 83876)

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared in ink on standard 22" x 36" Mylar sheets.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
3. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
4. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 78, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be provided to the CITY via floppy

diskettes (3 ½”), CD-ROM, or other media acceptable to the City Engineer. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.

5. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the setting monuments of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.

6. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

7. Deliver the original tracings of the Final approved plans to the CITY for their use in printing plans for prospective bidders.

8. All applicable coordinate control points and related project staking information shall be furnished on a 3-1/2” diskette in a format agreed upon by the CITY. When applicable, this coordinate information will be used by the CITY for construction staking purposes.

9. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans (including final tracings), specifications and estimates to the CITY within the time allotted for the PROJECT as stipulated below and generally in accordance with the project bar chart attached to Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

(a) Field check plans of the PROJECT for distribution to utilities by December 2, 2004.

(b) Completion of all work required by this agreement (including submittal of final approved plan tracings, field notes, and related PROJECT documents January 2005\_.

Agenda Item No. 11d

City of Wichita  
City Council Meeting

November 9, 2004

Agenda Report No. 04-1101

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Highland Springs 3rd Addition (west of 135th Street West, south of Central) (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the water distribution system, sanitary sewer and paving improvements in Highland Springs 3rd Addition on May 20, 2003.

Analysis: The proposed Agreement between the City and Baughman Company, P.A. provides for the design of bond financed improvements consisting of water distribution system, sanitary sewer and paving in Highland Springs 3rd Addition. Per Administrative Regulation 7a, staff recommends that Baughman be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to Baughman will be on a lump sum basis of \$46,200, and will be paid by special assessments.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

BAUGHMAN COMPANY, P.A.

for

HIGHLAND SPRINGS 3RD ADDITION

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BAUGHMAN COMPANY, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM NO. 448 89828 serving Lots 1 through 28, Block C; Lots 1 through 21, Block D, Highland Springs 3rd Addition (west of 135th Street West, south of Central) (Project No. 448 89828).

LATERAL 38, COWSKIN INTERCEPTOR SEWER serving Lots 1 through 28, Block C; Lots 1 through 21, Block D, Highland Springs 3rd Addition (west of 135th Street West, south of Central) (Project No. 468 83635).

THOROUGHbred from the south line of Lot 21, Block D, north of the south line of Central Avenue. TAYLOR CIRCLE (Lots 1 through 21, Block D) from the west line of Thoroughbred, west to and including the cul-de-sac, and on TAYLOR CIRCLE (Lots 10 through 28, Block C) from the east line of Thoroughbred, east to and including the cul-de-sac. THOROUGHbred COURT from the east line of Thoroughbred, east to and including the cul-de-sac. Sidewalk to be constructed on both sides of Thoroughbred. (west of 135th Street West, south of Central) (Project No. 472 83799).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Highland Springs 3rd Addition and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$5,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This

policy shall include an “all state” endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman’s Compensation Law. The liability limit shall be not less than:

Workman’s Compensation – Statutory

Employer’s Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER’S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

### III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY’S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER’S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

#### IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 448 89828	\$ 7,000.00
Project No. 468 83635	\$15,700.00
Project No. 472 83779	\$23,500.00
TOTAL	\$46,200.00

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

#### V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work, or because the services of the ENGINEER are unsatisfactory; PROVIDED, however, that in any case the ENGINEER shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this agreement, but in no case shall payment be more than the ENGINEER'S actual costs plus a fee for profit based upon a fixed percentage of the ENGINEER'S actual costs.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by



the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY

COUNCIL

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Carlos Mayans, Mayor

SEAL:

ATTEST:

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Karen Schofield, City Clerk

APPROVED AS TO FORM:

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Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.

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(Name & Title)

ATTEST:

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“EXHIBIT “A

## SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared in ink on standard 22” x 36” mylar sheets.

In connection with the services to be provided, the ENGINEER shall:

### A. PHASE I - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Soils and Foundation Investigations. The CITY’S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER’S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
3. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
4. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT’S plans and proposed special provisions shall address the requirements included in the City’s Administrative Regulations 78, “Cleanup,

Restoration or Replacement Following Construction.” Also, final plans, field notes and other pertinent project mapping records are to be provided to the CITY via floppy diskettes (3 ½”), CD-ROM, or other media acceptable to the City Engineer. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.

5. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the monumentation of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.

6. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

7. Deliver the original tracings of the Final approved plans to the CITY for their use in printing plans for prospective bidders.

8. All applicable coordinate control points and related project staking information shall be furnished on a 3-1/2” diskette in a format agreed upon by the CITY. When applicable, this coordinate information will be used by the CITY for construction staking purposes.

6. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.

a. Plan Development for the water improvements by December 20, 2004.  
(Project No. 448 89828).

b. Plan Development for the sewer improvements by December 20, 2004.  
(Project No. 468 83635).

c. Plan Development for the paving improvements by February 21, 2005.  
(Project No. 472 83778).

Agenda Item No. 11e

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1102

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Hawthorne 2nd, 3rd, 4th and Krug North Additions (north of 21st, east of 127th Street East) (District II)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the sanitary sewer and paving improvements in Hawthorne 2nd, 3rd, 4th and Krug North Additions on August 17, 2004.

Analysis: The proposed Agreement between the City and MKEC Engineering Consultants, Inc. (MKEC) provides for the design of bond financed improvements consisting of sanitary sewer and paving in Hawthorne 2nd, 3rd, 4th and Krug North Additions. Per Administrative Regulation 7a, staff recommends that MKEC be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to MKEC will be on a lump sum basis of \$70,100, and will be paid by special assessments.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

MKEC ENGINEERING CONSULTANTS, INC.

for

HAWTHORNE, 2ND, 3RD, 4TH AND KRUG NORTH ADDITIONS

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and MKEC ENGINEERING CONSULTANTS, INC., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

LATERAL 6, MAIN 13, FOUR MILE CREEK SEWER serving Lots 57 through 65, Block 1; Lots 1 through 17, Block 4; Lots 21 through 48, Block 4; Lots 9 through 14, Block 5, Hawthorne 3rd Addition; Lots 29 through 32, Block A; Lots 1 through 6, Block F, Krug North Addition (north of 21st, east of 127th Street East) (Project No. 468 83871). WILLIAMSGATE/CAMDEN CHASE from the east line of Peckham to the north line of 21st Street (north of 21st, east of 127th Street East) (Project No. 472 83644).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Hawthorne, 2nd, 3rd, 4th and Krug North Additions and perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

- D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
- E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.
- F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.
- G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
- H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.
- I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.
- J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory  
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of

the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

### III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

### IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 468 83871	\$17,800.00
Project No. 472 83644	\$52,300.00
TOTAL	\$70,100.00

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work, or because the services of the ENGINEER are unsatisfactory; PROVIDED, however, that in any case the ENGINEER shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this agreement, but in no case shall payment be more than the ENGINEER'S actual costs plus a fee for profit based upon a fixed percentage of the ENGINEER'S actual costs.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any



member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY

COUNCIL

---

Carlos Mayans, Mayor

SEAL:

ATTEST:

---

Karen Sublett, City Clerk

APPROVED AS TO FORM:

---

Gary Rebenstorf, Director of Law

MKEC ENGINEERING CONSULTANT, INC.

---

(Name & Title)

ATTEST:

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EXHIBIT "A"  
SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared in ink on standard 22" x 36" Mylar sheets.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
3. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
4. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 78, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be provided to the CITY via floppy diskettes (3 1/2"), CD-ROM, or other media acceptable to the City Engineer. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the

final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.

5. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the monumentation of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.

6. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

7. Deliver the original tracings of the Final approved plans to the CITY for their use in printing plans for prospective bidders.

8. All applicable coordinate control points and related project staking information shall be furnished on a 3-1/2" diskette in a format agreed upon by the CITY. When applicable, this coordinate information will be used by the CITY for construction staking purposes.

9. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans (including final tracings), specifications and estimates to the CITY within the time allotted for the PROJECT as stipulated below and generally in accordance with the project bar chart attached to Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

a. Plan Development for the sanitary sewer improvements by 120 days from notice to proceed.

(Project No. 468 83871).

b. Plan Development for the paving improvements by 120 days from notice to proceed .

(Project No. 472 83644).

Agenda Item No. 14a

CITY OF WICHITA  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1103

TO: Mayor and City Council Members

SUBJECT: Acquisition of Portions of the Abandoned Union Pacific Rail Corridor for the Midtown Greenway (District VI)

INITIATED BY: Office of Property Management

AGENDA: Consent

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Recommendation: Approve the acquisitions.

Background: In 1999, the Union Pacific Railroad abandoned the rail corridor that runs from Central Avenue and Wichita Street to Broadway and 15th Street North. Through this abandonment, rights to the corridor reverted to the adjacent property owners on both sides. The City has reviewed the former corridor and decided that it could be utilized to develop a greenway/lineal park connecting Horace Mann, Irving and Park Schools and the bicycle path on Central. In April 2002, the City Council approved \$74,000 in CDBG funding to acquire portions of the abandoned Union Pacific corridor from Central to 15th Street from adjacent property owners.

Analysis: Due to their size and configuration, the tracts being acquired are not developable by themselves. The majority of the tracts abut developed properties but lie outside the fenced, defined boundaries of the properties. The purchase price of similar tracts was reviewed to estimate market value. These amounts were offered to the adjacent property owners with several accepting the offers. The contracts represent three tracts with a total value of \$3,000.

Financial Considerations: A budget of \$3,100 is requested, consisting of \$3,000 for acquisition and \$100 for recording fees. The funding source is previously approved CDBG funds.

Legal Considerations: The Law Department has approved the contracts as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Contracts; and 3) Authorize all necessary signatures.

Agenda Item No. 14b

CITY OF WICHITA  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1104

TO: Mayor and City Council Members

SUBJECT: Acquisition of Street Right-of-Way, 500 Block of West 27th Street North  
(District VI)

INITIATED BY: Office of Property Management

AGENDA: Consent

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Recommendation: Approve the acquisition.

Background: On April 6, 2004, the City Council has approved the paving of 27th Street North between Fairview and Waco. This project was ordered by the City Council pursuant to State statutes. The improvements will include two lanes of asphalt paving, curb and gutter, and storm sewer.

Analysis: One owner in the project area would not agree to dedicate the needed right of way. The right of way needed from this tract contains 11,000 square feet and is 25 feet wide by 440 feet long. There are no improvements on the tract. The owner has agreed to sell the City the right-of-way for \$4,000.

Financial Considerations: A budget of \$4,100 is requested for the acquisition. This includes \$4,000 for the acquisition and \$100 for closing costs. The cost of the acquisition will be included in the assessment district.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendation/Action: It is recommended that the City Council approve the budget, approve the real estate purchase contract, and authorize necessary signatures.

Agenda Item No. 14c

CITY OF WICHITA  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1105

TO: Mayor and City Council Members

SUBJECT: Acquisition of 9907 West Maple for the Cowskin Creek Channel Improvement Project: Kellogg to Maple (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

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Recommendation: Approve the acquisition

Background: The Cowskin Creek Channel Improvement Project will require the acquisition of all or part of fourteen tracts. One of the required acquisitions is 9907 West Maple. The tract encompasses 3.66 acres and is improved with three single family residences and one duplex. All the units are tenant occupied. The project will require the removal of all improvements.

Analysis: The acquisition was appraised for \$285,000. This value was arrived at assuming the houses would be sold separately. The appraiser estimated the gross value of separate sales to be \$350,000. From this amount, he deducted \$15,000 for platting and \$50,000 for sewer service. Based on staff review and past costs, platting and sewer construction is expected to cost \$47,000, which would increase the appraised value to \$303,000. The owner has agreed to settle for a negotiated amount of \$322,000.

Financial Considerations: The funding source is Storm Water Utility and Federal funding. A budget of \$388,000 is requested. This represents \$322,000 for acquisition, \$40,000 for tenant relocation, \$25,000 for demolition and \$1,000 for closing costs, surveys, title insurance and other miscellaneous costs.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Contracts; and 3) Authorize all necessary signatures.

Agenda Item No.15

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1106

TO: Mayor and City Council

SUBJECT: Police Substation Security Enhancements – Districts I, III, IV

INITIATED BY: Police Department

AGENDA: Consent

Recommendation: Approve the proposal.

Background: In September 2004, the City of Wichita received \$100,000 in non-matching grant funds under the Department of Homeland Security 2003 Part II Critical Infrastructure Protection grant to increase security at Century II and the Police Department substations. The grant award was approved by the City Council on October 12, 2004, with Century II and the Police Department each receiving \$50,000. City staff has identified security enhancements consistent with the intent of the grant in the form of electronic access control devices and security cameras for the Police substations. Installation of access control and electronic surveillance equipment will greatly enhance security at the North, West, and South substations.

Analysis: The Police Department's substations have limited ability to prevent unauthorized access to non-public areas. Employees working within the facilities, especially after normal hours, are unable to monitor activities outside the building and in parking areas. In addition, as part of an internal study, a recommendation was made during the 2005 budget process to reclassify Station Officers as Clerk III positions, for a total cost savings of \$5,000 per position annually. Station Clerks have recently become more involved in data entry of traffic accidents and miscellaneous reports. A Clerk III position, which by definition requires more keyboarding and data entry skills, would be a better match for the job description than a Station Clerk, but would result in the removal of a firearm for personnel at the front desk at the substations. The addition of access control and electronic surveillance equipment will allow the clerks manning the front desk at the substations to maintain security and restrict unauthorized access to law enforcement sensitive information.

Financial Considerations: The Wichita Police Department has received a proposal from Sandifer Engineering, the City's contract vendor for security systems, for installation of access control and video monitoring equipment at the North, West, and South substations. The total cost for equipment and installation is \$27,040. Funding is provided in the Critical Infrastructure Protection grant.

Legal Considerations: None

Recommendations/Actions: It is recommended that the City Council approve the proposal and authorize the expense.

Agenda Item 16.

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1107

TO: Mayor and City Council

SUBJECT: Tourism Research/Marketing Use for Convention & Visitors  
Bureau

INITIATED BY: City Manager's Office

AGENDA: Consent

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Recommendation: Approve the allocation.

Background: In an effort to attract tourists and visitors to Wichita, a "Tourism Research and/or Marketing" fund is part of the Tourism and Convention Fund in the annual budget. This allocation is funded from the transient guest tax. It is earmarked to fund special marketing and research activities that the Greater Wichita Convention and Visitors Bureau and City of Wichita want to develop, with the approval of City Council.

The Greater Wichita Convention & Visitors Bureau is requesting funds for a new statewide marketing campaign. This campaign also addresses one of the key "Vioneering Wichita" efforts that outlined a need for better image and marketing efforts from Wichita. The Greater Wichita Convention & Visitors Bureau has developed a campaign that does just that.

Research has found that the primary reasons tourists come to Wichita are to visit family and friends, and to tour the area for these specific reasons: shopping, sporting events and attractions (in that order). The new marketing campaign has a strategic message that addresses these points, offering a variety of high-quality shopping, dining, events and entertainment in an easy day's drive. This campaign is bold and edgy and does not depict Wichita as a "Cowtown" or the "Air Capital" but rather breaks through the clutter with innovative, eye-catching graphics targeting the younger crowd. The tag line is simply: "Wichita – We got the goods."



Analysis: Staff has worked with the GWCVB on this budget and feels that these expenses are necessary allocations for this campaign to properly market Wichita. It is anticipated that these investments will be paid back through the transient guest tax fund and through visitors spending money in the community at area retail, dining and entertainment facilities.

Financial Considerations: The 2004 Proposed Budget has \$75,000 in this fund. The entire allocation will be used on this effort.

Legal Considerations: There are no legal considerations.

Recommendations/Actions: It is recommended that the City Council approve allocation from the "Tourism Research/Marketing" fund with the Convention and Tourism Bureau and authorize the necessary signatures.

Agenda Item No. 17

CITY OF WICHITA  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1108

TO: Mayor and City Council Members

SUBJECT: Release of Easement Located Adjacent to the 200 Block of North Wichita  
(District VI)

INITIATED BY: Office of Property Management

AGENDA: Consent

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Recommendation: Approve the release.

Background: The owners of the parking lot at 300 West 1st Street have asked the City to agree to the release of a portion of Wichita Street right-of-way easement adjacent to the east side of their property. Wichita Street right-of-way is 100 feet wide in this area. In the past, there was a railroad line in the west side of the right-of-way. This line has been abandoned and the tracks removed.

Analysis: The owners have offered \$25,000 (approximately \$1.00 per square foot) for the release of the City easement west of sixteen feet west of the curb of Wichita Street. This request has been reviewed by Engineering and other City staff. It was felt that if the easement released and the area vacated, the remaining right-of-way is sufficient for the City's current and future needs.

Financial Considerations: The City will receive cash consideration from the sale of the property at closing. In addition, the property will return to the tax rolls and likely increase in tax value through development.

Legal Considerations: The Law Department has approved the contracts as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Real Estate Purchase Contracts; and 2) Authorize all necessary signatures.

Agenda Item #

18

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1109

TO: Mayor and City Council

SUBJECT: Approval of Sale of Property Financed by Industrial Revenue Bonds (Goldsmiths, Inc.) (District II)

INITIATED BY: Finance Department

AGENDA: Consent Agenda

Recommendations: Adopt the Resolution.

Background: On July 17, 2001, the City Council approved the issuance of Industrial Revenue Bonds (IRBs) for Arst Realty, LLC in the amount of \$2,115,000 for the purpose of acquiring, constructing and equipping a new corporate headquarters and warehouse facility for Goldsmith's Inc., located at 8853 E. 37th Street North in northeast Wichita. In addition to the IRBs, the City Council approved a 100%, 5+5 year tax exemption on the bond-financed property. The bonds were privately placed with GE Capital ("Bondholder").

On June 10, 2003, Goldsmith's Inc. filed for bankruptcy and ceased its business operations, causing the bond issue to go into default. Since then, Rodger Arst, the CEO of Goldsmith's and the principal of Arst Realty, has been negotiating a settlement with the Bondholder. Mr. Arst has recently found buyers for the bond-financed property and has secured the consent of the Bondholder to release the property from the lien of the bonds. The buyers are local real estate developers Tom and Mike Boyd, doing business as TMD Southglen, L.L.C.. They have arranged to lease the building to Vatterott College, a technical training institution located across the street from the former Goldsmith's facility.

Analysis: Under the terms of the IRB documents, City Council approval is required for the release of the bond-financed property from the lien of the IRB Trust Indenture and for the sale of the property. In order to release the property from the Indenture, the City Council must authorize the execution of a Partial Release of Indenture. Even though the property is released, the IRBs will continue to be personally guaranteed by Rodger Arst. In order for the property to be conveyed to the purchasers, the City Council must authorize the execution of a Deed, Bill of Sale and Termination and Release of Lease. These actions are authorized by the adoption of the Resolution, which also instructs the Trustee Bank to deposit the net proceeds of the sale into the Principal and Interest Account for payment to the Bondholder. As required by bond documents, the Bondholder has consented to these arrangements.

Financial Considerations: The City of Wichita has no financial obligations that result from the default of the Goldsmith's IRBs. Upon sale of the Goldsmith's property to KCBB, Inc., the property will be returned to the tax rolls. Based on current valuations and mill levies, total taxes on the subject property are approximately \$55,000 per year, of which approximately \$15,000 will be paid to the City.

Legal Considerations: The attached Resolution and the documents authorized thereunder have been prepared by the City's Bond Counsel and approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council adopt the Resolution approving the sale of the Goldsmith's property and authorizing the execution of a Bill of Sale, Deed, Termination and Release of Lease and Partial Release of Indenture, and authorized the necessary signatures.

Agenda Item 19.

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1110

TO: Mayor and City Council

SUBJECT: River Corridor Area Phase I and II Environmental Site Assessment

INITIATED BY: Department of Environmental Health  
Department of Public Works

AGENDA: Consent

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Recommendation: Approve the application for Kansas Department of Health and Environment (KDHE) funding.

Background: A Phase I and II environmental site assessment of the River Corridor development area is needed for routine environmental due diligence. The Kansas Department of Health and Environment administers a brownfield program that would pay the cost of the study, estimated at between \$12,000 and \$20,000.

Analysis: Use of the KDHE program would not only save the City \$12,000 to \$20,000 in investigation costs, but would also allow the Phase I and II assessment to be completed in a more timely manner. Application for KDHE funding can be completed by Public Works and Environmental Health staff, and requires only City Council to proceed.

Financial Considerations: There is no cost to the City; KDHE will conduct and fund the study.

Legal Considerations: The Department of Law will review the application prior to submission.

Recommendations/Actions: It is recommended that the Council approve the application for KDHE funding of the Phase I and II investigation, and authorize staff to proceed with the project.

Agenda Item # 20

CITY OF WICHITA  
City Council Meeting

November 9, 2004

Agenda Report No. 04-1111

TO: Mayor and City Council Members

SUBJECT: Payment of Condemnation Award (Case No. 04 CV 2547)-WaterWalk Development (District I)

INITIATED BY: Law Department

AGENDA: Consent

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Recommendation: Authorize payment of the appraisers' award, together with appraisers' fees and court costs.

Background: The City has identified the need to acquire a tract of land located at 540 S. Water Street in connection with the public and private improvements to be constructed in connection with the WaterWalk Project. This tract of land is owned by the James L. Crawford, Revocable Living Trust. Earlier this year the City initiated eminent domain proceedings to acquire this property. On October 17, 2004, the court appointed appraisers filed their award. They determined the compensation to be paid for the acquisition of the property to be \$300,000.00. The court awarded the three appraisers fees in the amount of \$2,500.00 each. Court costs are \$111.

Analysis: In order for the City to acquire this property, it must pay the award, together with fees and costs, to the Clerk of the District Court on or before November 17, 2004.

Financial Considerations: The costs of acquiring these properties will be paid from project funds.

Legal Considerations: The City has until November 17, 2004, to decide whether or not to acquire the property. If payment is not made to the Clerk by that date, the eminent domain is deemed abandoned.

Recommendations/Actions: Authorize payment to the Clerk of the District Court in the amount of \$307,611.00 for acquisition of property interests condemned in Case No. 04 CV 2547.

Agenda No. 22.

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-0997A.

TO: Mayor and City Council

SUBJECT: Public Hearing and Request for Letter of Intent for Industrial Revenue Bonds (Fitness 2000 24hr Health Clubs) (District V)

INITIATED BY: Finance Department

AGENDA: Unfinished Business

Recommendation: Close the public hearing and deny the request.

Background: Fitness 2000 24hr Health Clubs (Fitness 2000) is requesting the issuance of a one-year letter of intent for industrial revenue bonds (IRBs) in an amount not to exceed \$5,000,000. Bond proceeds will be used to finance the cost of acquiring, constructing and equipping a new health and fitness facility. Fitness 2000 is also requesting the City Council's approval of a 50% five-year tax exemption on bond-financed improvements and a second five-year exemption upon City Council approval.

Analysis: Fitness 2000 was founded in Wichita in 1996 at its original facility located at 1046 S. Oliver, in the Parklane Shopping Center. Fitness 2000 currently has two health clubs, which are 100% managed by Mohsen Etezazi, the sole shareholder of Fitness 2000 Inc., a Kansas corporation. Fitness 2000 currently serves approximately 16,000 members, supported by more than 50 employees at its locations; each known for their quality service and leading-edge fitness equipment and programs. The second Fitness 2000 health club located at 2234 S. Oliver, is a women's only full service 24-hour health club, which offers a special focus on female health and fitness without any of the concerns or distractions which might otherwise be inherent in the Co-ed fitness environment.

Fitness 2000 health clubs currently offer more than 90 classes a week in Wichita, including the latest in aerobic conditioning in a variety of formats, such as step aerobics, Pilates, Bosu, and water aerobics, as well as yoga and stress management classes. Personal trainers, group fitness instructors, and membership representatives serve the membership at each location, and childcare services are also available at each location. Fitness 2000 centers have 24-hour service as well as towel service, locker rooms, saunas, hot tub, indoor track, indoor pool and steam rooms and is now seeking to expand its services to west Wichita and build further on a tradition of health and fitness.

Fitness 2000's proposed project is to construct and equip a new health and fitness facility on the southeast corner of Ridge Road and Central Ave. in West Wichita. Fitness 2000 has committed to hire 50 new employees. In addition to the standard fitness facilities present in this existing Fitness 2000 clubs, the new facility will include tennis, basketball and racquetball courts.

An analysis of the proposed uses of project funds is:

Construction of West Wichita facility	\$3,483,800	
Equipment and fixtures	1,500,000	
Cost of Issuance		16,200
Total Cost of Project:	\$5,000,000	

The Company plans to privately place the bonds with a financial institution with which it has an established banking relationship. The Company agrees to comply with the City's requirements contained in the Standard Letter of Intent Conditions. The cost/benefit analysis based on the fiscal and economic impact model of the Wichita State University's Center for Economic Development and Business Research reflects cost/benefit ratios as follows:

City	2.68 to one
County	3.08 to one
USD 259	1.80 to one
State	22.12 to one

After careful consideration, staff are recommending that the City Council deny the request from Fitness 2000 for industrial revenue bonds and property tax abatement. While Fitness 2000 is a fine business that provides valuable services to the Wichita community, it does not directly generate new wealth for the community. New wealth is generated for the community by businesses that export goods and services and import dollars from outside the area. Fitness 2000 generates most if not all of its revenue by selling its services to area residents.

IRBs and tax abatement are among the City's most valuable economic development incentive tools, and are effective when used to influence businesses that could easily locate in other regions, to locate here instead. Fitness 2000 must locate in the Wichita area in order to take advantage of the consumer market here. In staff's view, the City should reserve this important incentive for projects that truly create new wealth for the community, and not to help establish level playing fields between competing businesses.

Financial Considerations: Fitness 2000 agrees to pay all costs of issuing the bonds, including the City's \$2,500 annual IRB administrative fee for the term of the bonds. The estimated first year's taxes on Fitness' proposed \$5,000,000 expansion would be \$98,966, on real property improvements and \$36,516 on personal property, based on the 2003 mill levy. The requested 50% tax exemption would be divided among the taxing entities as follows: City - \$19,020; County/State - \$18,074; and USD 259 - \$30,647. In addition, construction costs and personal property paid for with IRB funds are exempt from state and local sales tax, which are estimated at \$237,162.

Legal Considerations: Any bond documents needed for the issuance of bonds would be prepared by the City's bond counsel. The Law Department reviews and approves the form of all bond documents prior to the issuance of any bonds.

Recommendations/Actions: It is recommended that the City Council close the public hearing and deny the request from Fitness 2000 for a Letter of Intent to issue industrial revenue bonds and property tax abatement on bond-financed property.

Agenda Item No. 23

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1082A

TO: Mayor and City Council

SUBJECT: VAC2004-00035: Request to vacate multiple platted easements located midway between Oliver Avenue and Edgemoor Drive on the southeast corner of Kellogg Avenue and Pinecrest Avenue (District III)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

Staff Recommendation: Approve.

MAPC Recommendation: Approve. (10-1)

Background: The applicant proposes vacation of multiple platted easements (see legal) located on Lots 1, 2 & 8, Cain and Smith's Replat of a part of Block 3, the Beverly Manor Addition and Lot 2, New Western Addition. The Cain and Smith's Replat of a part of Block 3, the Beverly Manor Addition was recorded July 1, 1992. The New Western Addition was recorded March 28, 1985.

Analysis: There is an existing encroachment (building) on the 14-foot easement located on Lots 1 & 2, Cain and Smith's Replat of a part of Block 3, the Beverly Manor Addition. There are no water or sewer lines in this easement or the other easements. The applicant proposes to redevelop the site.

The MAPC voted to approve (10-1) the vacation request, minus staff's recommendation of dedication of ten feet of contingent right-of-way (ROW) along the site's Kellogg Drive frontage and staff's subsequent alternative condition (in response to the MAPC's indication of that they would delete the contingent ROW dedication) of an outright dedication of a 10-foot wide sidewalk and utility easement along the Kellogg Drive



frontage. The City Engineer is appealing MAPC's recommendation to not follow these recommendations. The MAPC has the authority to modify Subdivision Standards with findings to support their action. The MAPC's findings were that neither the ROW or the easement were needed at this time and that the ROW should have been purchased with the Kellogg improvement project funds. Prior to the MAPC public hearing, the MAPC's Subdivision Committee had voted unanimously to approve the vacation request, with all of the conditions for approval, including the dedication of ten feet of contingent ROW along the site's Kellogg Drive frontage.

The staff recommendation for the contingent dedication of ROW was made per the Subdivision Regulation standards. The alternative condition of dedicating ten feet for a sidewalk and utility easement was made in anticipation of future utilities being placed in the immediate area. Staff had noted that the properties east and west of the site had, in the past, dedicated ROW along their Kellogg Drive frontage.

No one spoke in opposition to this request at the MAPC's advertised public hearing and its Subdivision Committee meeting. No written protests have been filed.

The Wichita City Council deferred action on this request at their November 2, 2004 meeting and will reconsider it at their November 9, 2004 meeting.

Financial Considerations: None

Legal Considerations: A certified copy of the Vacation Order will be recorded with the Register of Deeds. The applicant will provide Public Works with a sewer petition for the extension of sewer service.

Recommendation/Actions: (1) Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures; or,

(2) Follow staff recommendation and approve the vacation order, including the dedication of a 10-foot wide sidewalk and utility easement along the site's Kellogg Drive frontage and authorize the unnecessary signatures.

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1114

TO: Mayor and City Council

SUBJECT: Public Hearing and Issuance of Industrial Revenue Bonds  
(The Boeing Company) (District III)

INITIATED BY: Law Department

AGENDA: New Business

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Recommendation: Place on first reading the Bond Ordinance, approving the Bond Documents and issuance of Bonds for The Boeing Company.

Background: Since 1979, the City of Wichita has approved over \$3.4 billion in Industrial Revenue bond financing, in conjunction with ad valorem tax exemptions, to Boeing Commercial Airplanes, Wichita Division “Boeing Wichita”, a division of The Boeing Company. Boeing Wichita is now requesting the issuance of City of Wichita Industrial Revenue Bonds in an amount not-to-exceed \$67 million, under the authority of the Letter of Intent approved November 9, 1999 and as extended for five years on July 13, 2004.

Analysis: Boeing Wichita, located on both sides of Oliver Street from 31st Street South to South of 47th Street, is Kansas’ largest employer, with approximately 12,000 employees and an annual payroll of \$850 million. Boeing Wichita is engaged in manufacturing support of Boeing commercial airplanes and military aircraft modification. All Boeing Wichita sales are exported out of the state of Kansas.

Bond proceeds will be used for acquisition of new, advanced manufacturing equipment and enhancement of existing facilities. Some of the planned equipment purchases include riveting systems, milling machines and airplane program tooling. Boeing advises the new equipment will have no adverse effect on Wichita’s ambient air quality.

Acquisition of advanced technologies and the construction of new facilities is required for Boeing Wichita to compete for commercial and military production, in addition to sustaining on-going production programs. In these markedly different and difficult times, the bond proceeds will have an impact in stabilizing employment as it prepares to introduce the new 7E7 into the marketplace and will substantially assist with helping Boeing Wichita retain many critical professional, technical, and highly skilled employees. The economic impact of planned upgrades and expansion has a direct cascade effect on engineering and architect firms, machine shops, and material providers in Wichita.

The firm of Kutak Rock of Omaha, Nebraska will serve as bond counsel in the transaction. The Boeing Company will purchase the Bonds, as a result of which, there is no need for an underwriter. Boeing Wichita has agreed to comply with the Standard Conditions contained in the City’s IRB Policy.

Financial Considerations: The Boeing Company agrees to pay all costs of issuing the bonds and agrees to pay the City's \$2,500 annual IRB administrative fee for the term of the bonds. The Boeing Company qualifies for a ten-year 100% property tax exemption on the bond financed property on the basis of membership in the local aircraft manufacturing community, level of capital investment, and 100% out-of-state sales exportation. Consistent with the intent of the City Council in its action approving the November 9, 1999 letter of intent and as extended for five years on July 13, 2004, the ten-year period of exemption is to apply without a review by the Council at the five-year point. The IRB Lease document to be approved by the Bond Ordinance has been drafted accordingly. This is consistent with all discussion had at the public hearing on the item, although references to a five-year review were inadvertently included in the November 9, 1999 minutes from a superseded agenda report.

Legal Considerations: The City Attorney's Office has reviewed and approved the Bond Ordinance and principal financing documents.

Recommendations/Actions: It is recommended that City Council close the public hearing and approve first reading of the Bond Ordinance authorizing the execution and delivery of documents for the issuance of Industrial Revenue Bonds in an amount not-to-exceed \$67 million.

#### Agenda Item No. 25

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1115

TO: Mayor and City Council

SUBJECT: 2005 City of Wichita Legislative Program

INITIATED BY: City Manager's Office

AGENDA: New Business

Recommendation: Adopt a 2005 Legislative Program for the City.

Background: The process of drafting the 2005 Legislative Program began in August when requests for proposed legislation were distributed to City Council Members and City Departments. Discussions have also taken place with Sedgwick County, Regional Economic Area Partnership (REAP), League of Kansas Municipalities, Kansas Association of Counties, USD 259, Wichita Area Chamber of Commerce, Wichita

Independent Business Association, in an effort to identify and prepare for issues, which are likely to be considered by the 2005 Legislature.

The City of Wichita Legislative Program is intended to represent the adopted policies and positions of the Wichita City Council.

Analysis: The proposed 2005 Legislative Program contains policy positions on a variety of issues, allowing the City to respond to specific bills and proposals within an established policy framework.

Budget and financial issues will undoubtedly dominate the 2005 session of the Kansas Legislature. It is very likely attempts will be made to redirect funding now earmarked for local government programs. Protecting those sources of funding and preserving the Constitutional Right of Home Rule and local control are the major themes in the City of Wichita's 2005 Legislative Program.

The requests for new legislative initiatives by the City of Wichita are focused on those achievable issues that will benefit the City.

Legal Considerations: Position statements and proposals in the 2005 Legislative Program provide support for the City's stated goal to preserve its Home Rule authority and to secure legislative authority to enhance and improve government operations and services for the public.

Financial Consideration: Any number of legislative actions can impact City finances. The 2005 Legislative Program is designed to help the City maintain or improve its ability to control the financing of local government services to best serve the citizens of Wichita.

Recommendation/Actions: It is recommended that the City Council adopt its 2005 Legislative Program.

## **Agenda Item 26**

### **City of Wichita City Council Meeting November 9, 2004**

#### **Agenda Report No. 04-1116**

**TO:** Mayor and City Council Members

**SUBJECT:** Allocation of 2005 Special Liquor Tax Funds

**INITIATED BY:** City Manager's Office

**AGENDA:** New Business

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**Recommendation:** Approve 2005 funding allocations and development of provider contracts based on those allocations.

**Background:** In December of 1999 the City Council changed the way Special Liquor Tax allocations are made to fund alcohol and substance abuse providers. All providing agencies were required to develop outcomes-based measurements to demonstrate that their work makes a meaningful and measurable difference in the lives of their clients. At that time the Council also laid the groundwork for the formation of a Special Liquor Tax Coalition, comprised of local substance abuse professionals. The Coalition is responsible for assessing needs and barriers to service and with making funding recommendations to the City Council. The City Council also authorized selecting an administrator outside the City structure for the Special Liquor Tax Funds.

On March 28, 2000 COMCARE of Sedgwick County was selected as the administrator to monitor the programs funded by Special Liquor Tax dollars and to ensure that the providers used outcome-based measurements. As part of their management contract COMCARE organized the Special Liquor Tax Coalition and provides staff support.

In 2004 there are eighteen (18) alcohol and substance prevention and/or treatment projects receiving Special Liquor Tax funds. At their March 18, 2004 meeting the City Council authorized the issuance of a competitive Special Liquor Tax Request for Proposals (RFP) for the funding of 2005 calendar year projects. City staff issued a comprehensive RFP, which incorporated the City Council's guidelines for funding established at the December 1999 meeting, and solicited proposals in four categories: (1) alcohol and substance prevention and treatment programs; (2) detoxification programs; (3) case management programs; and (4) innovative projects.

**Analysis:** The Council is being requested to approve 2005 funding recommendations made by the Special Liquor Tax Coalition for proposals received in response to the RFP. The City received twenty-one (21) proposals from sixteen (16) different organizations with requested funding totaling more than \$2.1 million. Available funding for January 1, 2005 through December 31, 2005 is projected at \$1,442,980.

The Special Liquor Tax Coalition met and designated a subcommittee to review the responses to the RFP. After review by the subcommittee, recommendations were brought to the full committee for its review and action. The Coalition is recommending the following funding levels.

Agency	Funds Requested	2004 Funding Level	Coalition Recommendation
Behavioral Health Center	\$ 117,616	\$ 98,865	\$ 98,865

Big Brothers/Big Sisters	\$ 147,265	\$ 73,400	\$ 73,400
Center for Health and Wellness	\$ 178,000	\$ 105,527	\$ 105,527
Communities in Schools	\$ 31,652	\$ 30,557	\$ 31,652
Friends of Recovery	\$ 15,000	N/A - New	\$ 10,000
Grant Chapel AME	\$ 12,250	N/A – New	\$ 0
Knox Center	\$ 50,000	\$ 15,000	\$ 34,215
Mental Health Association/Pathways	\$ 42,000	\$ 32,625	\$ 42,000
Mid-America All Indian Center, IATS	\$ 69,320	\$ 43,870	\$ 48,870
Miracles, Children’s Prevention	\$ 78,143	\$ 71,800	\$ 71,800
Miracles, Case Management	\$ 251,302.75	\$ 241,584	\$ 150,000
Parallax, Detox.	\$ 275,870	\$ 250,000	\$ 275,870
Parallax, Chronic Relapse	\$ 121,137	\$ 109,410	\$ 109,410
Regional Prevention Center	\$ 161,355	\$ 149,070	\$ 149,070
Regional Prevention Center (SFTI)	\$ 82,275	\$ 76,394	\$ 0
Tiyospaye/Pueblo	\$ 70,000	\$ 15,000	\$ 70,000
Tiyospaye/CBC	\$ 73,375	\$ 68,535	\$ 68,535
Youth Development Services/Challenge Club	\$ 46,396	\$ 33,530	\$ 33,530
Youth Development Services/Parent Academy	\$ 53,521	N/A – New	\$ 0
SACK	\$ 141,500	N/A – New	\$ 70,236
Wichita ACTS	\$ 92,679	N/A – New	\$ 0
<b>Totals</b>	<b>\$ 2,110,656.75</b>	<b>\$1,415,167</b>	<b>\$1,442,980</b>

The recommendations provided by the Coalition would fund thirteen (13) prevention/treatment programs, two (2) innovative projects, one (1) detoxification program and one (1) case management program, for a total of seventeen (17) programs.

**Financial Considerations:** 2005 funding will be available in the Special Liquor Tax Fund to contract with providers for the seventeen (17) recommended programs totaling \$1,442,980. The contracts will not obligate general fund monies.

**Legal Considerations:** Approval as to form by the Department of Law will be obtained prior to the execution of the 2005 Special Liquor Tax provider contracts.

**Recommendation/Action:** Approve 2005 funding allocations, approve development of provider contracts based on those allocations, and authorize necessary contract signatures.

#### Agenda Item # 27

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1117

TO: Mayor and City Council Members

SUBJECT: Authorize submission of Historic Preservation Fund Grant Proposal FY 2005 (District I, II, III, IV, V, VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: New Business

Staff Recommendation: Authorize the submittal of the grant applications.

Background: As a Certified Local Government (CLG), the City of Wichita is eligible to participate in the Historic Preservation Fund (HPF) Grant program administered by the Kansas State Historic Preservation Office to finance activities that will contribute to planning for the preservation of our built environment and archaeological resources. These proposals are for projects that the Historic Preservation Board has adopted as part of their annual work program. City Council action is needed to authorize the Mayor to sign the assurances required for submission of the grant proposal.

The grant is to provide funding for three projects:

- 1.) Salary assistance to fund a part-time position to assist the Preservation Planner with activities carried out by the Historic Preservation Office and complete the historic inventory survey of the historic Central Business District. The federal grant for the position is \$40,150, which includes salary and required employment benefits.
- 2.) Funding to inventory and issue a written report of WPA structures in Wichita and prepare four to six National Register nominations for selected WPA structures. The federal grant for report and National Register nominations is \$8,000.
- 3.) Funding to present a technical assistance workshop for historic property owners. Target audience will be historic property owners, contractors, architects and realtors in the Wichita vicinity. The federal grant is \$6,900 to pay for travel for speakers and conference facilities and activities.

HPF grants require a 40 percent match of the total project cost. The total cost is \$92,366 with federal grant funds of \$55,050 and a City match of \$37,316. City match is provided through staff time, there is no actual cash match.

Analysis: The City of Wichita Historic Preservation Office annually submits grant proposals to fund projects that promote the goals outlined in the City of Wichita Historic Preservation Plan. The grant proposals fund projects that are not included in the Historic Preservation Office annual City budget.

Legal Considerations: Grant projects will not be undertaken until programmatic agreements have been executed with the State Historic Preservation Office

Financial Considerations: There is no actual cash match. City match is provided by documented staff hours, which is recorded as cash match on the application.

Recommendations/Actions: It is recommended the City Council authorize the submission of the grant proposals for FY2005 Historic Preservation Fund Grant through the Kansas State Historical Society and authorize the Mayor to sign the grant application and grant award documents.

Agenda Item No. 28

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1118

TO: Mayor and City Council

SUBJECT: ZON2004-00049 – Zone change from “GO” General Office to “LC” Limited Commercial. Generally located southwest of Seneca and Patterson. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendations: Approve, with access off of Seneca and Patterson. Vote (10-0)

DAB IV Recommendations: Approve, with access off of Seneca and Patterson. Vote (9-1)

MAPD Staff Recommendations: Approve, subject to dedication of complete access control along Seneca.



BACKGROUND: The applicant requests LC Limited Commercial zoning on a .736-acre vacant lot, currently zoned GO General Office, for a vehicle upholstery business to be housed in a new building. The application area is west of South Seneca and south of Patterson (3333 South Seneca). North of the application area, across Patterson, are two LC zoned auto-based uses, a GO zoned single-family residence, and an LC zoned shopping center. South and west of the application area are SF-5 zoned single-family residences. East of the application area, across Seneca, are SF-5 zoned single-family residences; and an SF-5 zoned, legal non-conforming auto repair business.

Analysis: DAB IV heard this request on October 6, 2004, and recommended approval without the staff recommended access control dedication along Seneca (9-1). No one spoke against the request at the DAB hearing, the applicants and their agent argued against the staff recommended dedication. MAPC heard this request on October 7, 2004, and recommended approval (11-0) without the staff recommended access control dedication; no one spoke against the request at the MAPC hearing. Staff has received no protest petitions on this case.

Financial Considerations: None

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council

1. Concur with the findings of the MAPC and approve the first reading of the ordinance establishing the zone change; or
2. Return the application to MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the members of the governing body on the first hearing.)

Agenda Item No. 29

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1119

TO: Mayor and City Council

SUBJECT: CON2004-34 – Conditional Use for ancillary parking on property zoned “B” Multi-family Residential. Generally located south of Central and west of Waco. (District VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendations: Approve, subject to conditions. Vote (9-0-2)

DAB Recommendations: Approve, subject to conditions. Vote (9-0).

MAPD Staff Recommendations: Approve, subject to conditions.

**BACKGROUND:** The applicant requests a Conditional Use to allow ancillary parking on 0.4 platted acres zoned “B” Multi-Family. The subject property is located south of Central and west of Waco. The ancillary parking is needed for an adjoining proposed office building to be located east of the proposed ancillary parking area. The subject property is currently developed with a parking lot that was constructed at a time when parking was permitted by right in the “B” district. Since the parking lot will be reconstructed, it must conform with current zoning regulations, which require approval of a Conditional Use. Ancillary parking areas are subject to the Supplementary Use Regulations contained in Section III-D.6.p.

The site plan does not show any screening or landscaping along the west and south property lines where the proposed parking lot would abut residentially-zoned property; however, Section III-D.6.p.(6) of the Unified Zoning Code requires screening and landscaping in these locations. Supplementary Use Regulations such as Section III-D.6.p. can be waived by the City Council upon receiving a favorable recommendation from the MAPC. The MAPC recommends waiving the requirements of Section III-D.6.p.

The surrounding area is characterized primarily by institutional and multi-family uses. The property to the east is zoned “GC” General Commercial, is currently developed with a parking lot, and is the proposed location of the office building to be supported by the requested ancillary parking lot. The property to the south is zoned “GC” General Commercial and is developed with a day care. The property to the west is zoned “B” Multi-Family and is undeveloped. The property to the north is zoned “B” Multi-Family is developed with apartments.

**Analysis:** There were no speakers in opposition to the request at the DAB VI meeting on October 4, 2004, or the MAPC meeting on October 7, 2004. DAB VI and MAPC both voted unanimously to recommend approval of the Conditional Use subject to following conditions:

1. The ancillary parking area shall be developed in general conformance with the approved site plan.
2. The ancillary parking area shall be developed in conformance with the requirements of Section III-D.6.p. of the Unified Zoning Code, except that the requirements of Section III-D.6.p.(6) are hereby waived.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

Financial Considerations: None.

Legal Considerations: The resolution has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Adopt the findings of the MAPC and approve the Conditional Use subject to the recommended conditions; authorize the Mayor to sign the resolution; or
2. Return the application to the MAPC for reconsideration

(An override of the Planning Commission's recommendation requires a two-third majority vote of the City Council on the first hearing.)

Agenda Item No. 29

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1119

TO: Mayor and City Council

SUBJECT: CON2004-34 – Conditional Use for ancillary parking on property zoned “B” Multi-family Residential. Generally located south of Central and west of Waco. (District VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendations: Approve, subject to conditions. Vote (9-0-2)

DAB Recommendations: Approve, subject to conditions. Vote (9-0).

MAPD Staff Recommendations: Approve, subject to conditions.

**BACKGROUND:** The applicant requests a Conditional Use to allow ancillary parking on 0.4 platted acres zoned “B” Multi-Family. The subject property is located south of Central and west of Waco. The ancillary parking is needed for an adjoining proposed office building to be located east of the proposed ancillary parking area. The subject property is currently developed with a parking lot that was constructed at a time when parking was permitted by right in the “B” district. Since the parking lot will be reconstructed, it must conform with current zoning regulations, which require approval of a Conditional Use. Ancillary parking areas are subject to the Supplementary Use Regulations contained in Section III-D.6.p.

The site plan does not show any screening or landscaping along the west and south property lines where the proposed parking lot would abut residentially-zoned property; however, Section III-D.6.p.(6) of the Unified Zoning Code requires screening and landscaping in these locations. Supplementary Use Regulations such as Section III-D.6.p. can be waived by the City Council upon receiving a favorable recommendation from the MAPC. The MAPC recommends waiving the requirements of Section III-D.6.p.

The surrounding area is characterized primarily by institutional and multi-family uses. The property to the east is zoned “GC” General Commercial, is currently developed with a parking lot, and is the proposed location of the office building to be supported by the requested ancillary parking lot. The property to the south is zoned “GC” General Commercial and is developed with a day care. The property to the west is zoned “B” Multi-Family and is undeveloped. The property to the north is zoned “B” Multi-Family is developed with apartments.

**Analysis:** There were no speakers in opposition to the request at the DAB VI meeting on October 4, 2004, or the MAPC meeting on October 7, 2004. DAB VI and MAPC both voted unanimously to recommend approval of the Conditional Use subject to following conditions:

1. The ancillary parking area shall be developed in general conformance with the approved site plan.

2. The ancillary parking area shall be developed in conformance with the requirements of Section III-D.6.p. of the Unified Zoning Code, except that the requirements of Section III-D.6.p.(6) are hereby waived.

3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

Financial Considerations: None.

Legal Considerations: The resolution has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Adopt the findings of the MAPC and approve the Conditional Use subject to the recommended conditions; authorize the Mayor to sign the resolution; or

2. Return the application to the MAPC for reconsideration

(An override of the Planning Commission's recommendation requires a two-third majority vote of the City Council on the first hearing.)

Agenda Item No. 30

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1120

TO: Mayor and City Council

SUBJECT: PUD2004-03 – Amendment #1 to PUD #12 Equestrian Estates to permit a neighborhood swimming pool. Generally located one-fourth mile south of Harry on the southwest corner of Triple Crown Court and Triple Crown Street (1777 S. Triple Crown St.). (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendations: Approve, subject to conditions. Vote (10-0-1)

DAB Recommendations: Not applicable.

MAPD Staff Recommendations: Approve, subject to conditions.

**BACKGROUND:** The applicant is requesting to amend PUD #12 Equestrian Estates to permit a neighborhood swimming pool on a 0.37-acre lot zoned "PUD" Planned Unit Development. The property is located on the southwest corner of Triple Crown Court and Triple Crown Street, approximately one-fourth mile south of Harry and east of 127th Street East.

The proposed site is located within Parcel 1 of the PUD. Swimming pools are specifically mentioned as being permitted within the "Reserve" areas, but not on individual lots. The lots in Parcel 1 currently are limited to single-family residential use. This amendment would permit the swimming pool to be located upon Lot 14, Block 1, Equestrian Estates Addition.

A number of single-family residences are under construction or have been recently completed in the vicinity of the site. The neighborhood also has ponds and open space recreational areas between clusters of homes. Parcel 3, zoned PUD, is located two blocks to the west and is developed with a large horse stable, an outdoor riding arena and an large exercise area and riding trails.

The site plan shows a 20-foot by 40-foot swimming pool, five parking spaces (including an ADA designated space), and a clubhouse located west of the pool. Normal parking requirements would be 19 spaces, including one ADA accessible space, based on the size of the pool and clubhouse. Since the clubhouse is large enough to allow gatherings that could include guests arriving in cars, it is recommended that the site plan be revised to increase the parking area to 12 spaces.

Section IV-B.3 of the UZC requires screening in the form of decorative fencing, evergreen vegetation, or landscaped earth berms along the west and south property lines. The Landscape Ordinance requires a landscaped street yard and parking lot screening along the local streets, and a landscape buffer along the west and south property lines.

**Analysis:** At the MAPC meeting held October 7, 2004, no citizens were present to speak and no protest petitions have been received. MAPC voted (10-0-1) to approve subject to staff recommendation, as follows:

1. The site shall be developed in general conformance with the approved site plan.
2. The subject property shall be developed in accordance with the regulations of the Landscape Ordinance, with the additional requirement of solid evergreen plantings

between the pool and deck and the residential property lines to the south and west, per a landscape plan approved prior to the issuance of a building permit.

3. A 15-foot building setback shall be provided on the south and west property lines.

4. Parking shall be no nearer than eight feet from the street on the north and east property lines. A landscaped planting bed with parking lot screening shall be provided to screen the parking lot.

5. A minimum of 12 parking spaces, including one ADA accessible space, shall be provided.

6. Development and use of the subject property for a neighborhood swimming pool shall be in accordance with all applicable federal, state, and local rules and regulations, including building and construction codes, health codes, and operational standards. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.

7. The transfer of title of all or any portion of the land included within the Planned Unit Development does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land and be binding upon the present owners, their successors and assigns, unless amended.

8. The applicant shall submit 4 revised copies of the PUD. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

Financial Considerations: None

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council

1. Concur with the findings of the MAPC, approve Amendment #1 to PUD #12 and place the ordinance amending PUD #12 on first reading; or

2. Return the application to MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the members of the governing body on the first hearing.)

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1121

TO: Mayor and City Council

SUBJECT: ZON2004-48 – Zone change from “SF-5” Single Family to “LC” Limited Commercial. Generally located north of Kellogg and east of Maize Road. (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendations: Approve, subject to platting within one year. Vote (9-0)

DAB Recommendations: Not applicable.

MAPD Staff Recommendations: Approve, subject to platting within one year.

BACKGROUND: The applicant requests a zone change for the subject property from “SF-5” Single Family to “LC” Limited Commercial. The subject property is a 2.1 acre unplatted tract that is located north of Kellogg and east of Maize Road. The subject property is currently developed with a residential structure that is proposed to be razed with the site redeveloped. The proposed use of the subject property is to construct a Value Place extended-stay hotel. Access to the subject property is proposed to Maize Road and/or to Kellogg via an access easement across property to the west and/or south.

The surrounding area is characterized primarily by commercial uses along the Kellogg corridor. Most of the properties along the Kellogg corridor are zoned “LC” Limited Commercial or “GC” General Commercial. There is a significant amount of undeveloped land (both commercially and residentially zoned) along Kellogg that likely will develop in the future with at least some commercial uses with the opening of the limited access Kellogg freeway. Residential properties in the area are located behind the commercial properties that front Kellogg and are primarily zoned “SF-5” Single Family and developed with single-family residences.

Analysis: There was one speaker in opposition to the request at the MAPC meeting on October 7, 2004, who cited concerns with the height of the proposed hotel, declining property residential values caused by nearby commercial uses, and drainage. The MAPC voted unanimously to recommend approval of the zone change subject to platting the property within one year.

Financial Considerations: None.

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:



1. Adopt the findings of the MAPC and approve the zone change subject to the condition of platting within one year; instruct the Planning Department to forward the ordinance for first reading when the plat is forwarded to the City Council; or

2. Return the application to the MAPC for reconsideration

(An override of the Planning Commission's recommendation requires a two-third majority vote of the City Council on the first hearing.)

### Agenda Item #32

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1122

TO: Mayor and City Council Members

SUBJECT: DED 2004-23 and 24 -- Dedication of Utility Easements for Property Located on the South Side of Harry and West of Hoover Road. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

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MAPC Recommendation: Accept the Dedications.

Background: The Dedications are a requirement of Lot Split Case Nos. SUB 2004-110 and SUB 2004-111 and are being submitted for two-feet of additional utility easements.

Analysis: The Dedications have been reviewed and approved by the Planning Commission.

Financial Consideration: None.

Legal Consideration: The Dedications will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council accept the Dedications.

### Agenda Item #33

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1123

TO: Mayor and City Council Members

SUBJECT: DED 2004-25 and DED 2004-26 -- Dedication of Utility Easements;  
DED 2004-27 and DED 2004-28 -- Dedication of Street Right-of-Way for  
Property Located West of Seneca and north of 53rd Street North. (District VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

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MAPC Recommendation: Accept the Dedications.

Background: As a requirement of Lot Split Case No. SUB 2004-104, these Dedications are being submitted for ten-foot utility easements and 30 feet of street right-of-way along Delaware.

Analysis: The Dedications have been reviewed and approved by the Planning Commission.

Financial Consideration: None.

Legal Consideration: The Dedications will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council accept the Dedications.

Agenda Item No. 34

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1124

TO: Mayor and City Council

SUBJECT: VAC2004-00041 Request to vacate a platted utility easement,  
generally located midway between 29th Street north and 37th Street North, on the east  
side of Ridge Road, southeast of Westwind Bay Court and Westwind Bay.  
(District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve.

MAPC Recommendation: Approve. (unanimously)

Background: The applicant proposes vacation of the platted 10-foot utility easement located between Lots 4 & 5, Block B, Ridge Port 4th Addition. The Ridge Port 4th Addition was recorded Register of Deeds April 17, 2000.

Analysis: A lot split will reconfigure the "TF-3" Two-family Residential zoned lots. There are no franchised utilities, drainage, water lines or sewer lines in the easement. A substitute utility easement will be provided to staff.

The MAPC and its Subdivision Committee voted unanimously to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing and its Subdivision Committee meeting. There was one written protest against the request, but that protest was resolved.

Legal Considerations: A certified copy of the Vacation Order and a utility easement dedicated by separate instrument will be recorded with the Register of Deeds.

Recommendation/Actions: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1125

TO: Mayor and City Council

SUBJECT: ZON2004-00050 – Zone change from “SF-5” Single-family Residential to “NO” Neighborhood Office. Generally located west of Amidon and 34th Street North. (District VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendations: Approve (6-4) subject to platting within one-year and Protective Overlay #148.

MAPD Staff Recommendations: Approve subject to platting within one-year and Protective Overlay #148.

DAB VI Recommendations: Approve (7-2) subject to platting within one-year and Protective Overlay #148.

BACKGROUND: The applicant requests a zone change from “SF-5” Single-family Residential to “NO” Neighborhood Office on property located one lot north of the junction of Womer and North Amidon, which subsequently becomes 34th Street North when the street turns to the northeast. The applicant has indicated the desire to convert an existing residence to general office use for a small CPA office. The office would operate on the scale of a typical home occupation as allowed in residential zoning districts of greater intensity than “SF-5” except that nobody would be living in the residence.

According to the information submitted by the applicant, the applicant intends to remodel the interior of the structure, and to add parking/drive aisles as necessary to meet Unified Zoning Code requirements. The parking lot would be located on the lot and landscaped to screen it from view of the residences across Amidon..

The property is located north of a medical office building zoned “GO” General Office. The property to the southwest across Womer is zoned “LC” Limited Commercial and is vacant except for a cell tower on the west edge of the tract. The property to the east and northeast is zoned “SF-5” Single-family Residential and developed with single-family residences. The Wichita-Valley Center Flood Control Project (the Big Ditch) lies to the north/northwest.

Analysis: At the District VI Advisory Board meeting held October 4, 2004, the board recommended approval (7-2) subject to recommended conditions of the protective overlay. The resident living directly across from the property was present to oppose the request due to access to the subject property on Amidon, an unpaved road.

At the MAPC meeting held October 7, 2004, MAPC voted (6-4) to recommend approval subject to staff recommended conditions of the protective overlay. Neighbors were present to request denial and submitted a letter of opposition. No formal protest was filed. Discussions centered on access on Amidon and its potential effect on single-family residential across the street to the east. The owner of the abutting office was approached to allow cross-lot circulation through the adjacent parking lot directly to Womer, but has not granted it. The recommendation of MAPC was to require the cross-lot access agreement from the applicant for the possible cross-lot connection in the future.

The MAPC recommendation was to approve the zone change to “NO” Neighborhood Office subject to a Protective Overlay #148 with the following provisions:

1. The office use shall be conducted within the premises of the current structure but shall have those improvements such as but not limited to parking and drive aisles and landscaping to comply with the Unified Zoning Code site development regulations. Additionally, the parking lot shall be located and landscaped to screen it from view of the residential zoning east of Amidon.
2. No more than eight individuals (including related family members) shall be allowed to work from the premises at any one time.
3. No direct access shall be allowed onto Womer.
4. The property owner shall grant a cross-lot easement in favor of the property to the south and seek to obtain an easement from the property to the south to serve as the main point of access to the subject property.
5. The property owner shall execute an agreement with the City not to protest paving of Amidon.
6. The property owner shall execute a guarantee for extension of sewer to the property.
7. Light poles, including base and fixtures, shall not exceed 14 feet in height and shall be shielded to prevent spillage to the northeast and east.
8. No signage on Amidon shall be permitted larger than two square feet; provided that it shall not be illuminated and shall be mounted flat against the façade of the building. Ground signage on Womer shall be limited to 10 feet in height.

Financial Considerations: None

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Adopt the findings of the MAPC and approve the zone change subject to the protective overlay conditions; approve first reading of the ordinance establishing the zone change; or
2. Return the application to the MAPC for reconsideration

(An override of the Planning Commission's recommendation requires a two-third majority vote of the City Council on the first hearing.)

Agenda Item No. 36

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1126

TO: Mayor and City Council

SUBJECT: CUP2004-34 – Amend DP106 Northwest Village Community Unit Plan to allow for emergency medical and diagnostic services, and educational services. Generally located northeast of the intersection of North Tyler Road and west 13th Street North. (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendations: Approve, subject to conditions. Vote (7-4)

DAB Recommendations: Approve, subject to conditions. Vote (6-1).

MAPD Staff Recommendations: Approve, subject to conditions.

**BACKGROUND:** The Northwest Village Community Unit Plan (CUP) is located at the northeast corner of Tyler Road and 13th Street North, and is divided into five development parcels, with each parcel containing specific development standards. The application area is located in Parcel 4, and has a base zoning of LC, Limited Commercial, subject to the CUP development restrictions. Super Market Developers own the western 6.8 acres of the 16.75-acre Parcel 4, and are seeking an amendment to allow “emergency medical and diagnostic services, and education services” to occur on the applicants’ portion of Parcel 4. If the request is approved, Tegra Healthcare Properties intends to purchase the site and lease some or all-of-the site to Wesley Health Care who intends to provide medical services, including emergency medical services (EMS).

The applicants’ portion of Parcel 4 is developed with a commercial building containing approximately 66,000 square feet that was, until two to three years ago, a grocery store. The building is now vacant and has been since the grocery store closed.

This facility would provide emergency services for minor injuries up to and including low-level trauma events. 10,000 square feet of the building’s 66,000 square feet would be committed to the EMS service. The EMS facility would be open seven days a week, 24-hours a day. Wesley estimates there would be an average of one to two emergency runs a day. Another 5,000 feet would be dedicated to diagnostic services, including laboratory work, and diagnostic imaging capabilities such as CT, x-ray, mammography and ultrasound. The remaining 51,000 square feet would be used for medical offices; educational services and other permitted uses (see Tegra Healthcare letter of August 3, 2004) The entrance to the EMS room would be from the west side of the building. The applicant anticipates 190 to 290 weekly patient visits for all medial uses.

Access to the site is via both Tyler and 13th streets.

The eastern portion of Parcel 4 is owned by another entity, Northwest Centre, L.L.C., and is developed with 79,550 square feet of retail and office uses. The other four parcels within the CUP are developed with a bank, additional retail, office and service uses and residences.

Currently, Parcel 4 permits: shopping center; tire battery and accessory; financial, office, personal service convenience and service oriented retail uses.

Land to the north is part of the CUP and developed with residences; to the south is Northwest High School; and to the west are commercial and residential uses.

A masonry wall exists along the northern boundary of Parcel 4 that separates the commercial uses from the residential uses, located to the north. There is also a mature hedgerow of trees located north of the wall. City Fire Station 16 is located approximately 932 feet north of the application area (16th Street and Tyler), and responds to an average of 139 emergency calls a month with siren and lights.

The applicants held a neighborhood meeting with area residents on August 26, 2004.

Analysis: On October 4, 2004, this request was reviewed by District Advisory Board (DAB) V. Several members of the public spoke for and against the request. Those in support of the request noted the lack of any other emergency services on the west side of town and noted that the vacant building was undesirable as it attracted graffiti and the grounds would be better kept if the building were occupied. Those in opposition noted that the proposed use would increase the noise level experienced by the neighborhood, the entrance to the facility was too close to nearby residences, the buffer wall located between the neighbors and the proposed use needed to be higher and there was already enough emergency traffic in the area due to the fire station (located approximately ¼ mile north of the application area). Occidental Management, which provides management services for the commercial and office uses located east of the application area, expressed opposition due to: concerns that they could lose tenants due to escape clauses in their leases that allow them to void their lease agreements if the application area is not used for uses compatible with office and retail uses; that the proposed use is out of character with existing office and retail uses located in the center and that emergency room clients may represent security concerns. It was also Occidental's opinion that the building could be put to a retail or office use if the applicant chose to build their emergency service center on nearby property that the applicant already owns, and the building is vacant primarily because the applicant has held a sales offer for several months which inhibited the marketing of the site. District Advisory Board V recommended approval 7-1-1, asking the applicant to look at increasing the height of the screening wall separating the application area from the neighborhood to the north.

The Metropolitan Area Planning Commission (MAPC) reviewed this request on October 7, 2004. The action of the Commission was to recommend approval 7-4 after hearing comments from the public that mirrored those presented at the district advisory board.

The action of the MAPC was to permit "emergency medical and diagnostic services, and education services" to occur on the applicants' portion of Parcel 4.

Property owners representing 59 percent of the land area located within the notice area submitted letters of opposition. (These letters of opposition do not trigger a super majority-voting requirement as they would if a zone change request were involved, but are reported to depict the level of support or opposition for a CUP amendment.)

Financial Considerations: None

Legal Considerations: On amendments to community unit plans not accompanied by a zoning request, the action of the MAPC is final unless there is an appeal by an aggrieved party. Occidental Management co-owns the parcel (with the applicant) that includes the application area, and they have, along with others, appealed the action of the MAPC. Since Occidental Management was not a co-applicant on this amendment, that situation triggers a super majority vote requirement for the Council to approve the request. For any



approval that amends only a portion of a parcel, as is the case in this instance, it requires an affirmative vote of at least three-fourths of all the members of the Governing Body.

Recommendation/Actions:

1. Concur with the findings of the MAPC to allow “emergency medical and diagnostic services, and education services” to occur on the applicants’ portion of Parcel 4 of DP-106; or
2. Return the application to the MAPC for reconsideration.

(Approval of the request requires a  $\frac{3}{4}$  majority vote of the membership of the governing body, and an override of the Planning Commission’s recommendation requires a  $\frac{2}{3}$  majority vote of the membership of the governing body on the first hearing.)

Agenda Item No. 36

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1126

TO: Mayor and City Council

SUBJECT: CUP2004-34 – Amend DP106 Northwest Village Community Unit Plan to allow for emergency medical and diagnostic services, and educational services. Generally located northeast of the intersection of North Tyler Road and west 13th Street North. (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendations: Approve, subject to conditions. Vote (7-4)

DAB Recommendations: Approve, subject to conditions. Vote (6-1).

MAPD Staff Recommendations: Approve, subject to conditions.

BACKGROUND: The Northwest Village Community Unit Plan (CUP) is located at the northeast corner of Tyler Road and 13th Street North, and is divided into five development parcels, with each parcel containing specific development standards. The application area is located in Parcel 4, and has a base zoning of LC, Limited Commercial,

subject to the CUP development restrictions. Super Market Developers own the western 6.8 acres of the 16.75-acre Parcel 4, and are seeking an amendment to allow “emergency medical and diagnostic services, and education services” to occur on the applicants’ portion of Parcel 4. If the request is approved, Tegra Healthcare Properties intends to purchase the site and lease some or all-of-the site to Wesley Health Care who intends to provide medical services, including emergency medical services (EMS).

The applicants’ portion of Parcel 4 is developed with a commercial building containing approximately 66,000 square feet that was, until two to three years ago, a grocery store. The building is now vacant and has been since the grocery store closed.

This facility would provide emergency services for minor injuries up to and including low-level trauma events. 10,000 square feet of the building’s 66,000 square feet would be committed to the EMS service. The EMS facility would be open seven days a week, 24-hours a day. Wesley estimates there would be an average of one to two emergency runs a day. Another 5,000 feet would be dedicated to diagnostic services, including laboratory work, and diagnostic imaging capabilities such as CT, x-ray, mammography and ultrasound. The remaining 51,000 square feet would be used for medical offices; educational services and other permitted uses (see Tegra Healthcare letter of August 3, 2004) The entrance to the EMS room would be from the west side of the building. The applicant anticipates 190 to 290 weekly patient visits for all medial uses.

Access to the site is via both Tyler and 13th streets.

The eastern portion of Parcel 4 is owned by another entity, Northwest Centre, L.L.C., and is developed with 79,550 square feet of retail and office uses. The other four parcels within the CUP are developed with a bank, additional retail, office and service uses and residences.

Currently, Parcel 4 permits: shopping center; tire battery and accessory; financial, office, personal service convenience and service oriented retail uses.

Land to the north is part of the CUP and developed with residences; to the south is Northwest High School; and to the west are commercial and residential uses.

A masonry wall exists along the northern boundary of Parcel 4 that separates the commercial uses from the residential uses, located to the north. There is also a mature hedgerow of trees located north of the wall. City Fire Station 16 is located approximately 932 feet north of the application area (16th Street and Tyler), and responds to an average of 139 emergency calls a month with siren and lights.

The applicants held a neighborhood meeting with area residents on August 26, 2004.

Analysis: On October 4, 2004, this request was reviewed by District Advisory Board (DAB) V. Several members of the public spoke for and against the request. Those in support of the request noted the lack of any other emergency services on the west side of

town and noted that the vacant building was undesirable as it attracted graffiti and the grounds would be better kept if the building were occupied. Those in opposition noted that the proposed use would increase the noise level experienced by the neighborhood, the entrance to the facility was too close to nearby residences, the buffer wall located between the neighbors and the proposed use needed to be higher and there was already enough emergency traffic in the area due to the fire station (located approximately ¼ mile north of the application area). Occidental Management, which provides management services for the commercial and office uses located east of the application area, expressed opposition due to: concerns that they could lose tenants due to escape clauses in their leases that allow them to void their lease agreements if the application area is not used for uses compatible with office and retail uses; that the proposed use is out of character with existing office and retail uses located in the center and that emergency room clients may represent security concerns. It was also Occidental's opinion that the building could be put to a retail or office use if the applicant chose to build their emergency service center on nearby property that the applicant already owns, and the building is vacant primarily because the applicant has held a sales offer for several months which inhibited the marketing of the site. District Advisory Board V recommended approval 7-1-1, asking the applicant to look at increasing the height of the screening wall separating the application area from the neighborhood to the north.

The Metropolitan Area Planning Commission (MAPC) reviewed this request on October 7, 2004. The action of the Commission was to recommend approval 7-4 after hearing comments from the public that mirrored those presented at the district advisory board. The action of the MAPC was to permit "emergency medical and diagnostic services, and education services" to occur on the applicants' portion of Parcel 4.

Property owners representing 59 percent of the land area located within the notice area submitted letters of opposition. (These letters of opposition do not trigger a super majority-voting requirement as they would if a zone change request were involved, but are reported to depict the level of support or opposition for a CUP amendment.)

Financial Considerations: None

Legal Considerations: On amendments to community unit plans not accompanied by a zoning request, the action of the MAPC is final unless there is an appeal by an aggrieved party. Occidental Management co-owns the parcel (with the applicant) that includes the application area, and they have, along with others, appealed the action of the MAPC. Since Occidental Management was not a co-applicant on this amendment, that situation triggers a super majority vote requirement for the Council to approve the request. For any approval that amends only a portion of a parcel, as is the case in this instance, it requires an affirmative vote of at least three-fourths of all the members of the Governing Body.

Recommendation/Actions:

1. Concur with the findings of the MAPC to allow “emergency medical and diagnostic services, and education services” to occur on the applicants’ portion of Parcel 4 of DP-106; or
2. Return the application to the MAPC for reconsideration.

(Approval of the request requires a  $\frac{3}{4}$  majority vote of the membership of the governing body, and an override of the Planning Commission’s recommendation requires a  $\frac{2}{3}$  majority vote of the membership of the governing body on the first hearing.)

#### Agenda Item No. 37

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1127

TO: Mayor and City Council

SUBJECT: CUP2004-31 – Amend DP18#2 – Amendment to the River Bend Shopping Center Community Unit Plan. Generally located north of 21st Street North and west of Hood. (District VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendations: Denied. Vote (11-0)

DAB Recommendations: Denied. Vote (7-1-1)

MAPD Staff Recommendations: Denied.

**BACKGROUND:** The applicant is seeking approval to allow an existing business located at 1514 west 21st Street that currently holds cabaret and drinking establishment-restaurant (DE-R) licenses to also obtain a dance hall permit. Based upon an interpretation provided by the Superintendent of Central Inspection, businesses holding all three licenses – drinking establishment-restaurant, cabaret and dance hall - are to be treated per the Unified Zoning Code as a “night club in the city.” The applicant indicates he would like to hold dances a two times a month at this location. Given the Superintendent’s interpretation the applicant could not legally allow dancing by the public without this amendment.

The crux of this application is that if the request were to be approved, then the limitation that is currently in place on the amount of alcohol that can be sold on this site by virtue of its current DE-R license would be removed. Without the DE-R license restriction, there are not any restrictions on the volume of alcohol that could be sold. Establishments that dispense alcohol, provide live entertainment and offer public dancing can be good neighbors to other businesses, but they can also become nuisances that generate excessive noise, enable less than desirable public behavior – assault, property destruction, weapons violations and disturbing the peace. Such behaviors can quickly detrimentally impact adjoining properties, especially when residential uses are nearby.

The existing business is part of an existing retail strip center that is a platted lot located northwest of the intersection of Hood Avenue and 21st Street, and is located on Parcel 1 of the River Bend Shopping Center Community Unit Plan (C.U.P.), DP-18. The applicant's property is zoned LC Limited Commercial, subject to the conditions contained in DP-18, including the development standards for Parcel 1. Uses permitted in Parcel One are restricted to: Shopping center, department store, restaurant, offices and other similar uses permitted in "LC" zoning. The applicant is seeking to amend the list of permitted uses in Parcel 1 to include "night club in the city" as a permitted use. Existing businesses located in the CUP include: Mazatlan bar (DE-R plus dance hall that closed or let its licenses expire on 8-10-04); clothing store; grocery store, bus service, café, vehicle repair and the El Zarape Bar and Grill (DE-R).

Parcel 4 of DP-18, located north of Parcel 1 (north of 22nd Street, between Garland Avenue and Hood), was, in 1969, granted a Board of Zoning Appeals exception (BZA 18-69) to permit off-street parking on this lot that is zoned SF-5 Single-family Residential. The only use permitted by DP-18 on Parcel 4 is "parking for Parcel 1." If this request is approved, club patrons could park on Parcel 4, in addition to the parking located on Parcel 1.

Single-family Residential zoning and uses are located north, east and west of Parcel 4. SF-5 Single-family Residential, B Multi-family Residential, LC Limited Commercial and GO General Office zoning surround Parcel 1, the site of the proposed club. Surrounding uses include: medical offices, church, apartments, office, single-family residential and retail services.

A "night club in the city" is defined by the Unified Zoning Code as an establishment that provides entertainment, which may include the provision of dancing by employees or patrons, and where cereal malt beverage or alcoholic liquor are offered to the public or its members, and which may or may not serve food. "Night club in the city" is a use permitted by right in the "LC" district except when it is located within 200 feet of a church, place of worship, public park, school or residential zoning district. A Conditional Use (or an amendment to a Community Unit Plan) is required if a night club is located within 200 feet of the aforementioned uses or zoning districts.

In this situation, three circumstances trigger the need for the amendment. The first situation is the proposed site is located within a C.U.P. whose list of permitted uses does not include “night club,” and those uses listed are deemed to be less intense than a “night club in the city,” so an amendment to DP-18 is required. The second circumstance is the space within the strip center housing the proposed club and the parking that supports the club is located within 200 feet of residential zoning. The space proposed to house the club within the retail center is located within 100 feet of residential zoning. The parking for the club located on Parcel 1 is located within 100 feet of residential zoning, while the parking permitted on Parcel 4 for uses located in Parcel 1, including the club, is adjacent to single-family zoning. A third trigger is that the Office of Central Inspection has determined that any business holding a liquor and or cereal malt beverage service, offering live entertainment (cabaret license per Chapter 3.08.030) and a dance or dance hall license (per Chapter 3.28) requires that the use be automatically classified as a “night club in the city.”

Analysis: District Advisory Board (DAB) VI reviewed this request on October 4, 2004. Four individuals spoke in opposition citing concerns with undesirable activities (public drunkenness, noise late at night/early morning, excessive traffic and club patrons blocking residential driveways, public urination and gunshots) that have occurred at this location with a previous tenant operating a similar facility. They noted that they had to call the police on numerous occasions to report these and other illegal activities. Since the previous club at this location has closed, it was their contention that approval of this request would allow these types of behaviors to begin again. They also contended that this location is too close to residences, and this use is not in character with the neighborhood commercial centers in which it is located, nor the nearby residences located north, east and west of the neighborhood center. The DAB voted 7-1-1 to recommend denial of the request.

The Metropolitan Area Planning Commission (MAPC) reviewed this request on October 7, 2004. Seven individuals spoke in opposition citing similar concerns to those expressed at the DAB meeting. The MAPC voted 11-0 to deny the request to amend the list of permitted uses within DP-18 to include “night club in the city” based upon the findings found in staff’s report.

Approximately 45 individuals have signed a petition objecting to the request. Neighboring property owners located within 200 feet of the application area have submitted letters of objection equaling 18.19 percent of the land area located within 200 feet of the application.

Financial Considerations: None

Legal Considerations: Unless the CUP amendment is accompanied by a change in zoning request, the action of the MAPC is final unless there is an appeal by an aggrieved party. In this instance, the applicant has appealed the planning commission’s denial.

Recommendation/Actions:

1. Concur with the findings of the MAPC and deny the request to amend Community Unit Plan DP-18 to allow a “night club in the city;” or
2. Return the application to the MAPC for reconsideration.

(An override of the Planning Commission’s recommendation requires a 2/3rds majority vote of the membership of the governing body on first hearing.)

Agenda Item No. 38

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1128

TO: Mayor and City Council Members

SUBJECT: DR2004-0004 – Adoption of Proposed Rezoning for Certain Properties in the McAdams Neighborhood. Generally located east of Washington Street, west of Hydraulic Street, north of Murdock / 8th Street and south of 17th Street North. (District I)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-consent)

MAPC Recommendation: Approve, reflecting all property owner “opt-out” requests received as of 5:00 p.m., October 7, 2004. (11-0)

MAPD Recommendation: Approve, reflecting all property owner “opt-out” requests received as of 5:00 p.m., October 7, 2004.

D.A.B. I Recommendation: D.A.B. I recommended unanimous approval.

Background:

In June 2003, following two years of development and neighborhood input, the Wichita City Council adopted the McAdams Neighborhood Revitalization Plan to serve as a blueprint for the revitalization of this unique neighborhood. The current zoning pattern for the McAdams neighborhood dates back over 50 years, and reflects a different vision for most of the neighborhood than has been identified in the recently adopted McAdams Neighborhood Revitalization Plan. One of the priority action items identified in the Plan is the creation of a zoning approach that better reflects existing land use and future redevelopment opportunities.

The vision of the McAdams Neighborhood Revitalization Plan is to revitalize and re-populate the McAdams neighborhood by encouraging new predominately single-family housing on vacant lots in the neighborhood. However, virtually all of the residential areas are zoned “B” Multi-Family District which allows and encourages high-rise apartments and project housing, rather than single-family homes. This zoning also allows perceived undesirable uses such as commercial group homes and correctional placement homes. The “GC” General Commercial District zoning along 9th and 11th Streets also allows uses such as recycling processing centers, boarding kennels, welding shops and night clubs which are deemed by the neighborhood association to be undesirable adjacent to surrounding residential uses. Property owners are reluctant to re-invest in their properties due to inappropriate uses that are allowed under the current zoning.

#### Analysis:

The McAdams Neighborhood Rezoning Committee, consisting of neighborhood and city representatives, was formed earlier this year to help recommend a new zoning scheme for a portion of the McAdams neighborhood defined as follows: 17th Street on the north, Hydraulic on the east, Murdock / 8th Street on the south, and Washington on the west. The following principles were adopted to guide this process:

1. No property will be rezoned against the wishes of the property owner. No changes will be proposed that will prevent residents, businesses or landlords from continuing their existing operations or uses.
2. No property will be rezoned to a higher intensity zoning classification. This is necessary in order to streamline the neighborhood rezoning initiative, while at the same time independently preserving full notification requirements normally associated with any property rezoning proposal for higher intensity uses.
3. Neighborhood-wide rezoning will be proposed that accommodates the wishes of property owners while facilitating future anticipated /desired land uses as envisioned in the McAdams Neighborhood Revitalization Plan. There will be no rezoning fees charged to property owners affected by this rezoning initiative.
4. Neighborhood-wide rezoning will be proposed that reflects the support and endorsement of the McAdams Neighborhood Association and the 21st Century Coalition for Neighborhood Revitalization.

Work began on the McAdams neighborhood-wide rezoning initiative in April 2004. An inventory and analysis of existing land uses and zoning was completed in May 2004. The Rezoning Committee subsequently completed a preliminary rezoning scheme that was presented at two neighborhood public meetings held on June 24th and June 26th at the McAdams Recreation Center. Letters were sent to all affected property owners advising of the rezoning initiative and inviting them to attend the neighborhood meetings. Copies



of the existing zoning and proposed rezoning were also made available at two business establishments located within the McAdams neighborhood. Based upon public comment received at those meetings, the McAdams Rezoning Committee prepared a revised final proposed rezoning scheme dated July 19, 2004.

On August 2, 2004, the final proposed rezoning scheme was presented to members of the District I Advisory Board, who unanimously approved the proposal. On August 5th, the proposed rezoning scheme received the endorsement of the Advanced Plans Committee.

On August 19, 2004, the Metropolitan Area Planning Commission set a public hearing date of October 7, 2004, to receive comments on the proposed rezoning scheme. Letters accompanied by detailed map sets that outline the nature of the proposed rezoning change were sent to all property owners advising of the public hearing date, and advising of the opportunity to have their property remain as current zoned.

Copies of the existing and proposed zoning maps were posted on the City's web page. A full page, colored map legal notice was also placed in the Wichita Eagle on September 16, 2004 showing the existing zoning and proposed zoning maps for the McAdams neighborhood.

On October 7, 2004, the Metropolitan Area Planning Commission held a hearing to consider the area-wide rezoning initiative proposed for the McAdams neighborhood. No members of the public chose to speak against this item.

MAPC voted to approve the McAdams rezoning proposal (11-0) subject to the requirement that it reflect all property owner "opt-out" requests received as of 5:00 p.m., October 7, 2004. A total of five property owners have requested to "opt-out" of the proposed rezoning initiative.

An Ordinance has been prepared that adopts the rezoning of certain properties located in the McAdams neighborhood by reference to the legal listing of properties contained in the document entitled "McAdams Neighborhood Rezoning as recommended by the Metropolitan Area Planning Commission on October 7, 2003.

Financial Considerations: There are no financial implications for the City associated with the adoption of this Ordinance.

Legal Considerations: The Metropolitan Area Planning Commission, in accordance with Kansas state statutes, held a public hearing for the proposed McAdams rezoning on October 7, 2004, with the required notice of public hearing published in the official City newspaper. The proposed McAdams neighborhood rezoning initiative has been reviewed for legal consistency and appropriateness by the City's Legal Department. The adopting Ordinance has also been reviewed and approved as to form.

Recommendations / Actions:

1. Concur with the findings of the MAPC, and adopt the Ordinance approving the McAdams neighborhood rezoning proposal.
2. Return the proposal to the MAPC for reconsideration.

Agenda Item # 39

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1129

TO: Mayor and City Council

SUBJECT: Airport New Service Announcement Media Buy

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority

Recommendation: Approve authorizing Airport agency of record with media buy.

Background: It is the policy of the Wichita Airport Authority to fund marketing programs aimed at stimulating the use of Wichita Mid-Continent Airport. Such programs may be directed from time to time on a temporary basis toward the use of air carriers who introduce and sustain new service. Mid-Continent Airport has been experiencing new and expanded airline service with the arrival of recent carriers. The Airport Authority has determined that it is in the best public interest to promote these services to educate travelers. It is critical to Airport success that those in the catchment area be aware of these services and utilize them. Prior marketing efforts have contributed to the growth of passengers at Mid-Continent.

With Council approval in November 2003, the Airport hired Sullivan Higdon Sink as the agency of record for one year. The contract is up for review on November 30, 2004.

Analysis: A week ago, Northwest Airlines announced new direct service from Mid-Continent Airport to Detroit International Airport. New service begins January 12. This provides Wichita with tremendous opportunities for international travel, as Detroit has become Northwest's hub airport for service. Mid-Continent Airport would like to use \$25,000 to alert the traveling public of this new service. In service promotion, a media buy should be negotiated as soon as possible so that it is ready to begin in early December. By working with the marketing team at Northwest plus the City of Wichita

marketing team, Sullivan Higdon Sink will strategize and negotiate the media buy with Kansas media.

Financial Considerations: Sullivan Higdon Sink will work with City staff to place a media buy that fits appropriately with current on-going marketing efforts already made. The budget will not exceed \$25,000. The allocation is available in the Airport budget with an adjustment.

Legal Considerations: None at this time.

Recommendations/Actions: It is recommended that the City Council continue utilizing the services of Sullivan Higdon Sink.

Agenda Item No. 40

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1130

TO: Wichita Airport Authority

SUBJECT: Agreement – God’s Speed Flights, Inc. and Limousine Service

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority

Recommendation: Approve the Agreement.

Background: The WAA has received a request from God’s Speed Flights and Limousine Service to provide limousine and shuttle service to and from Wichita Mid-Continent Airport.

Analysis: The limousine/shuttle service would be an enhancement to the existing ground transportation services provided to the users of Mid-Continent Airport.

Financial Considerations: While the revenue to the WAA for the provision of this service is not significant (\$50 per month), it does provide additional alternatives for travelers using Wichita Mid-Continent Airport.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendations/Actions: Approve the Agreement; and authorize the necessary signatures.

Agenda Item No. 41

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1131

TO: Wichita Airport Authority

SUBJECT: Supplemental Agreement No. 3 – Professional Insurance Management  
2120 Airport Road, Wichita Mid-Continent Airport

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority

Recommendation: Approve the Supplemental Agreement.

Background: Professional Insurance Management (PIM) leases the majority of an office facility located at 2120 Airport Road. The company is interested in exercising a three-year renewal option included in their current agreement.

Analysis: The Martens Companies conducted an appraisal of this facility and recommended a rental rate of \$9.00 per sq.ft. PIM leases 1,653 sq.ft. on the first floor, and the entire second floor which consists of 4,213 sq.ft. Utility, janitorial, and minor maintenance expenses are the responsibility of the tenant.

Financial Considerations: Annual revenue to the Airport Authority is \$52,790 per year.

Legal Considerations: This Supplemental Agreement has been approved as to form by the Department of Law.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Supplemental Agreement; and authorize the necessary signatures.

#### Agenda Item #42

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1132

TO: Wichita Housing Authority Board Members

SUBJECT: 2004-05 Payment Standards – Section 8 Housing Choice Vouchers

INITIATED BY: Housing Services Department

AGENDA: Housing Authority

Recommendation: Review and approve the revised Payment Standards for the Section 8 Housing Choice Voucher Program.

Background: Payment standards represent the amount of rent paid to owners, plus tenant paid utilities, and are established by Housing Authorities based on current Fair Market Rents. The Department of Housing and Urban Development published a notice of Fair Market Rents (FMRs), effective October 1, 2004. These FMRs are calculated to be at the 50th percentile of rents in the Wichita area, and include an allowance for utilities.

The Quality Housing and Work Responsibility Act (QHWRA) of 1998 requires that Housing Authorities operating Section 8 Housing Choice Voucher Programs, establish Section 8 Voucher Payment Standards between 90% and 110% of the Published Fair Market Rent for each bedroom size. The payment standards are used to calculate the amount of the monthly subsidy paid to landlords.

Analysis: The QHWRA also includes a provision that a family which initially receives Section 8 tenant-base assistance, may not be required to pay more than 40% of its adjusted monthly income for rent and utilities. In the Wichita area, as in many other parts of the country, rents have increased more rapidly than the rate of inflation. Therefore,

many rental units are unavailable to new Section 8 tenants when maximum voucher payments are calculated at 100% of the FMR. In addition, the lower payment standard has the effect of restricting Section 8 tenants to lower income areas where rents are lower.

In 2003, the Wichita Housing Authority Board authorized a payment standard at 110% of FMR for 0-4 bedroom units and 100% of FMR of 5-6 bedrooms.

In order to determine appropriate rent rates for the WHA based on the latest published Fair Market Rent schedule, staff reviewed requests for tenancy and actual rents for the months of January through October 2004. As a result of the staff review, Housing Services recommends that the current payment standards for 1-4 bedroom sizes continue to be calculated at 110% of the 2003 FMR. The Department further recommends that payment standards for 0 (studio) and 5-6 bedroom units be calculated at 100% of 2004 FMR.

Following is a table of the October, 2004 FMRs, the current payment standards and the recommended increased payment standards:

#### BEDROOM SIZE

	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>
FMR (10/1/2004)	429	481	624	806	908	1044	1180
Current Pymt. Standard	410	492	658	892	963	1007	1138
Recommended Standard	429	492	658	892	963	1044	1180

Financial Consideration: The result of increasing the payment standards is an increase in the amount of assistance per tenant, which results in fewer households served. However, the WHA recommends these standards in order to meet its goal of 100% utilization of all vouchers funded by HUD. The higher rent standards better ensure maximum lease activity based on the market conditions in Wichita, and better ensure de-concentration.

Legal Considerations: None

Recommended Action: It is recommended that the Wichita Housing Authority Board approve the revised Payment Standards for the Section 8 Voucher Program to be effective for December 1, 2004 for new clients and current clients who are relocating, and as of February 1, 2005 for current clients at the time of their annual recertification.

Agenda Item #43

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1133

TO: Wichita Housing Authority Board Members

SUBJECT: 2004-05 Utility Allowances – Section 8 Programs

INITIATED BY: Housing Services Department

AGENDA: Housing Authority

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Recommendation: Review and approve 2004 Utility Allowances for the Section 8 Program.

Background: The Quality Housing and Work Responsibilities Act of 1998 requires Housing Authorities to conduct an annual review of utility allowances provided for tenant furnished utilities. When an increase or decrease of 10% or more is noted in utility rates, the allowance must be revised. The Wichita Housing Authority (WHA) Board must review and approve the utility allowances prior to implementation by the Housing Services Department.

Utility allowances are based on actual rates and average consumption estimates and are calculated taking into account structure type and number of bedrooms. Utility allowances are not direct compensation to the tenant for their utility consumption; they are subtracted from the tenant's Adjusted Gross Rent to provide the net amount payable to landlords as rent.

Analysis: In October, 2004, Staff conducted a review of rates based on information available from utility suppliers, to determine the appropriate consumption for an energy-conserving household, and homes/apartments of different structure types. This review found that the rate changes do not meet the thresholds necessitating a change in the schedule. Therefore, Housing Services staff recommends no change in the utility allowance schedule. It is recommended that the 2004-05 allowances remain the same as the 2003 allowances.

The following chart is a comparison of a typical three bedroom, single family dwelling unit that utilizes a combination of utilities, appliances and services as follows: a.) heating (gas); b.) air conditioning (electric); c.) cooking (electric); d.) other electrical lighting and refrigerator (electric); e.) water heating (gas); f.) water; g.) sewer; h.) trash collection; i.) range (electric) and j.) refrigerator (electric).

PROPOSED  
2004-05 UTILITY  
ALLOWANCE

A. Heating (gas)	\$ 43.00
B. Air Conditioning (electric)	\$ 16.00
C. Cooking (electric)	\$ 9.00
D. Other Electric Lights	\$ 35.00
E. Water Heating (gas)	\$ 17.00
F. Water	\$ 16.00
G. Sewer	\$ 18.00
H. Trash Collection	\$ 16.00
I. Range (rental)	\$ 35.00
J. Refrigerator (rental)	\$ 36.00
TOTAL ALLOWANCES	<u>\$241.00</u>

Financial Considerations: This a HUD required action. Approving the utility allowances for 2004-05 will not affect the Housing Services Department's financial position.

Recommended Action: It is recommended that the Housing Authority Board approve the utility allowances for the 2004-05 fiscal year for the Section 8 Rental Assistance Programs, effective on December 1, 2004 for new clients and current clients who are relocating, and as of February 1, 2005 for current clients at the time of their annual recertification.

Agenda Item No. 44

City of Wichita  
City Council Meeting  
November 9, 2004

Agenda Report No. 04-1134

TO: Wichita Housing Authority Board Members



SUBJECT: 2005 Utility Allowances - Public Housing Program

INITIATED BY: Housing Services Department

AGENDA: Housing Authority

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Recommendation: Review and approve the 2005 utility allowances for the Public Housing Program.

Background: The Quality Housing and Work Responsibilities Act of 1998 requires Housing Authorities to conduct an annual review of utility allowances provided for tenant furnished utilities. The air-conditioning in Greenway and McLean Manor is provided by the Wichita Housing Authority (WHA). When an increase or decrease of 10% or more is noted in utility rates, the allowance must be revised. The WHA Board must review and approve the utility allowances prior to implementation by the Housing Services Department.

Utility allowances are based on actual rates and average consumption estimates and are calculated taking into account structure type and number of bedrooms. HUD also provides that housing authorities that choose to install air-conditioning, shall ensure that the cost of utilities attributable to air-conditioning, when the use is optional, shall be borne by the residents. Utility allowances are not direct compensation to the tenant for their utility consumption; they are subtracted from the tenant's Adjusted Gross Rent to provide the net amount payable to public housing authorities as rent.

Analysis: Public Housing retained the South Central Kansas Economic Development District, Inc. (SCKEDD) to conduct a utility allowance study using REM/Design software. The analysis considered updated natural gas and electric rates, along with the projected water rate increase, and recommends that the allowances be increased. Following are the recommended utility allowances for Public Housing rental units, effective February 1, 2005:

Bedroom Size	Utility Allowance
Apartments	
One – Rosa Gragg	\$79.00
One – Bernice Hutcherson	75.00
One (Greenway and McLean Manor)	27.00
Two (Greenway and McLean Manor)	23.00
Houses	
Two	116.00
Three	137.00
Four	144.00

Five	203.00
Six	172.00

Financial Considerations: This a HUD required action. Approving the utility allowances for 2005 will affect the Housing Services Department's financial position by decreasing rental income.

Legal Considerations: None

Recommendations/Actions: Review and approve the 2005 utility allowances for the Public Housing Program, effective February 1, 2005.